

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916

No. 273

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JOE ADAMS ET AL., APPELLANTS,

vs.

F. V. TANNER, ATTORNEY GENERAL OF THE STATE OF  
WASHINGTON, AND GEORGE H. GRANDALL, PROSECUT-  
ING ATTORNEY OF SPOKANE COUNTY, STATE OF  
WASHINGTON.

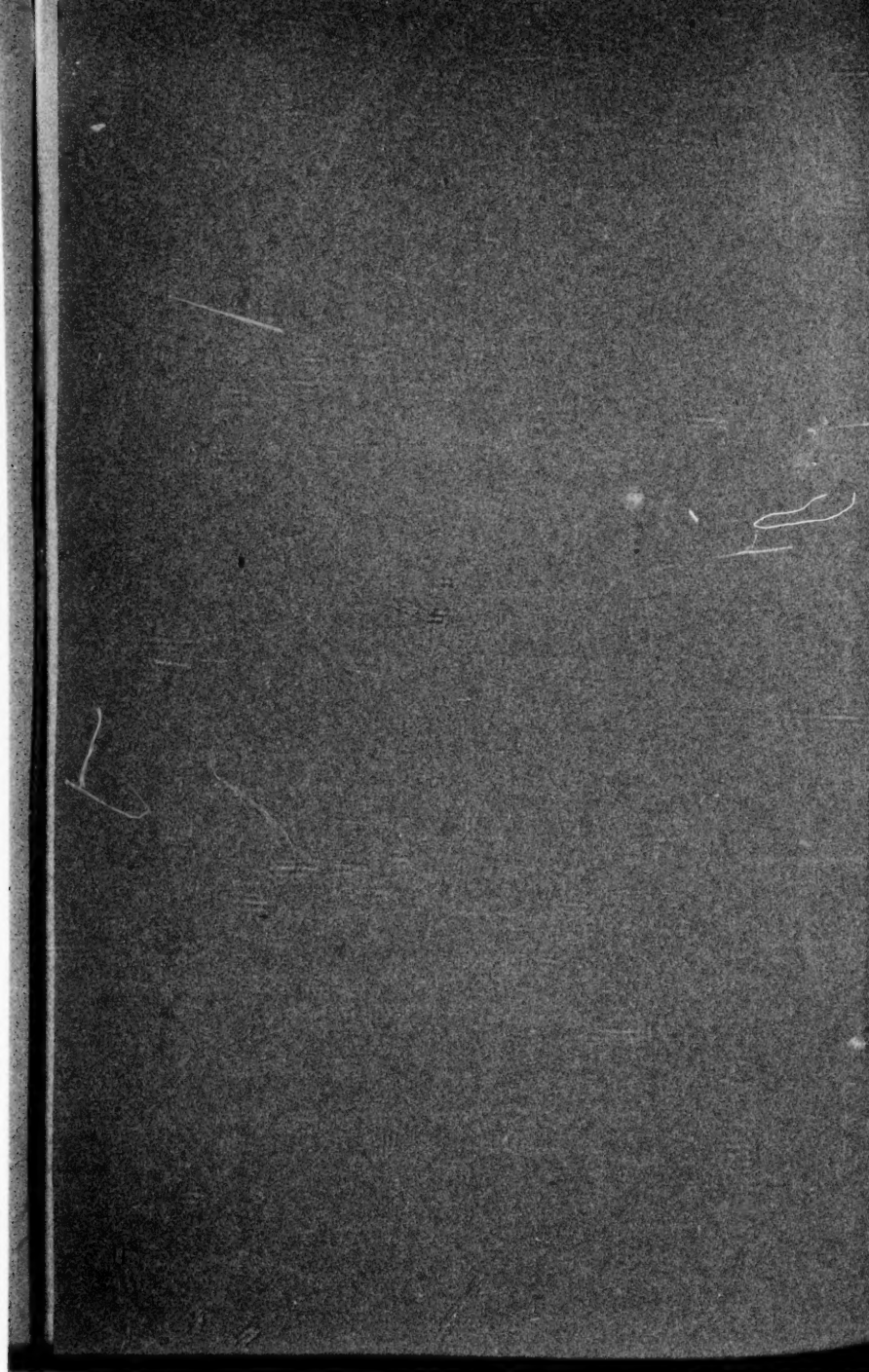
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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF WASHINGTON.

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FILED NOVEMBER 1, 1916.

(34,971)





(24,971)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 688.

JOE ADAMS ET AL., APPELLANTS,

*vs.*

W. V. TANNER, ATTORNEY GENERAL OF THE STATE OF  
WASHINGTON, AND GEORGE H. CRANDALL, PROSECUT-  
ING ATTORNEY OF SPOKANE COUNTY, STATE OF  
WASHINGTON.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF WASHINGTON.

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1 TRANSCRIPT OF RECORD.

In the Supreme Court of the United States.

JOE ADAMS et al., Appellants,

vs.

W. V. TANNER, Attorney General of the State of Washington;  
GEORGE H. CRANDALL, Prosecuting Attorney of Spokane County,  
State of Washington, Appellees.

Upon Appeal from the United States District Court for the Eastern  
District of Washington, Northern Division.

2 *Names and Addresses of Attorneys of Record.*

Cannon & Ferris, 708 Old National Bank Building, Spokane,  
Washington.

D. V. Halverstadt, 405 Hoge Building, Seattle, Washington, At-  
torneys for Plaintiffs and Appellants, and

W. V. Tanner, Attorney General of the State of Washington,  
Olympia, Washington, Attorney for Defendants and Appellees.

3 In the District Court of the United States for the Eastern  
District of Washington, Northern Division.

No. 2064.

JOE ADAMS; ALBERT M. MACHO; W. MATHEWSON; LUCILE C.  
Greever; J. W. Buhler and J. C. Mottaz, Copartners Doing Busi-  
ness under the Firm-name and Style of Home Employment  
Agency; J. T. Pierce and J. D. Beattie, Copartners Doing Busi-  
ness under the Firm-name and Style of National Employment  
Agency; Herman Rae and F. L. Buell, Copartners Doing Business  
under the Firm-name and Style of the Scandinavian-American  
Employment Agency; W. J. Lawrence; W. A. Miller; J. S. Ross  
and J. W. Rogers, Copartners Doing Business under the Firm-  
name and Style of Rogers & Ross; Ellie C. Travers; Charles Lewis  
and Augustus Anderson, Copartners Doing Business under the  
Firm-name and Style of Lewis & Anderson Labor Agency; F. E.  
Featherstone and J. L. Featherstone, Copartners Doing Business  
under the Firm-name and Style of Featherstone Labor Agency,  
and H. C. Willis, Plaintiffs,

vs.

W. V. TANNER, Attorney General of the State of Washington, and  
George H. Crandall, Prosecuting Attorney of Spokane County,  
State of Washington, Defendants.

*Complaint.*

To the Judge of the District Court of the United States for the  
Eastern District of Washington, Northern Division:

The plaintiffs above named respectfully show to your Honorable  
Court:

## I.

That the plaintiff, W. A. Miller, is a citizen and resident of the state of Minnesota, and that each and all of the other plaintiffs above named are residents and citizens of the State of Washington, residing at Spokane, Washington, and at all times hereinafter mentioned were engaged in carrying on and conducting employment agencies in the city and county of Spokane, State of Washington, and have been so engaged for many years last past. This bill of

4 complaint is filed on behalf of plaintiffs above named and all others similarly situate who have a general interest in the subject matter of this action, and who constitute a class so numerous as to make it impracticable to bring them all before the court, against W. V. Tanner, the duly elected, qualified and acting Attorney General of the State of Washington, and George H. Crandall, the duly elected, qualified and acting Prosecuting Attorney of Spokane County, State of Washington.

## II.

That the value of the matter in dispute herein exceeds the sum of three thousand dollars (\$3000.00) exclusive of interest and costs. The jurisdiction of this honorable court is invoked because and by reason of the federal question involved in said suit, and equity jurisdiction because plaintiffs have no adequate remedy at law.

## III.

That plaintiff, Joe Adams, has been for eight years last past engaged in carrying on an employment agency in the City of Spokane, State of Washington, and is at present so engaged, said agency being carried on under the name and style of Adams & Goodwin, and having a license from the City of Spokane, being License No. C1058, to so operate and conduct said business from January 1, 1914, to December 31, 1914, inclusive, having paid to the City of Spokane the sum of \$100.00 for said license fee.

That the plaintiff, Albert M. Macho, has been for more than fifteen years last past engaged in carrying on an employment agency in the city of Spokane, State of Washington, and is at present so engaged, said agency being carried on under the name and style of Macho Employment Agency, and having a license from the City of Spokane, being License No. C616, to so operate and conduct said business from January 1st, 1914, to December 31, 1914, inclusive, having paid to the City of Spokane the sum of \$100.00 for said license fee.

5 That the plaintiff, W. Mathewson, has been for four years last past engaged in carrying on an employment agency in the City of Spokane, State of Washington, and is at present so engaged, said agency being carried on under the name and style of Mathewson Employment Agency, and having a license from the City of Spokane, being License No. C1338, to so operate and conduct said business until August 6, 1915, having paid to the City of Spokane the sum of \$100.00 for said license fee.

That the plaintiff, Lucile C. Greever, has been for more than ten years last past engaged in carrying on an employment agency in the City of Spokane, State of Washington, and is at present so engaged, said agency being carried on under the name and style of Woman's Domestic Guild, and having a license from the City of Spokane, being License No. C471, to so operate and conduct said business until December 31, 1914, having paid to the City of Spokane the sum of \$100.00 for said license fee.

That the plaintiff, J. W. Buhler and the plaintiff J. C. Mottaz, have been for nine years last past engaged in carrying on an employment agency in the City of Spokane, State of Washington, and are at present so engaged, said agency being carried on under the name and style of Home Employment Agency, and having a license from the City of Spokane, being License No. C929, to so operate and conduct said business until March 1, 1915, having paid to the City of Spokane the sum of \$100.00 for said license fee.

That the plaintiffs, J. T. Pierce and J. D. Beattie, have been for one year last past engaged in carrying on an employment agency in the City of Spokane, State of Washington, and are at present so engaged, said agency being carried on under the name and style of National Employment Agency, and having a license from the City of Spokane, being License No. C739, to so operate and conduct said business until January 12, 1915, having paid to the City of Spokane the sum of \$100.00 for said license fee.

6 That the plaintiffs, Herman Rae and F. L. Buell, have been for ten years last past engaged in carrying on an employment agency in the City of Spokane, State of Washington, and are at present so engaged, said agency being carried on under the name and style of Scandinavian-American Employment Agency, and having a license from the City of Spokane, being License No. C740, to so operate and conduct said business until December 31, 1914, having paid to the City of Spokane the sum of \$100.00 for said license fee.

That the plaintiff, W. J. Lawrence, has been for six years last past engaged in carrying on an employment agency in the City of Spokane, State of Washington, and is at present so engaged, said agency being carried on under the name and style of Lawrence Employment Agency, and having a license from the City of Spokane, being License No. C498, to so operate and conduct said business until December 31, 1914, having paid to the City of Spokane the sum of \$100.00 for said license fee.

That the plaintiff, W. A. Miller, has been for six years engaged in carrying on an employment agency in the City of Spokane, State of Washington, and is at present so engaged, said agency being carried on under the name and style of Northern Pacific Labor Agency, and having a license from the City of Spokane, being License No. C800, to so operate and conduct said business until December 31, 1914, having paid to the City of Spokane the sum of \$100.00 for said license fee.

That the plaintiffs J. S. Ross and J. W. Rogers, have been for two years engaged in carrying on an employment agency in the



City of Spokane, State of Washington, and are at present so engaged, said agency being carried on under the name and style of Rogers & Ross, and having a license from the City of Spokane, being License No. C807, to so operate and conduct said business until February 1, 1915, having paid to the City of Spokane the sum of \$100.00 for said license fee.

7 That the plaintiffs, Charles Lewis and Augustus Anderson, have for eight years been engaged in carrying on an employment agency in the City of Spokane, State of Washington, and are at present so engaged, said agency being carried on under the name and style of Lewis & Anderson Labor Agency, and having a license from the City of Spokane, being License No. C469, to so operate and conduct said business until December 31, 1914, having paid to the City of Spokane the sum of \$100.00 for said license fee.

That the plaintiffs, F. E. Featherstone and J. L. Featherstone, have for six years been engaged in carrying on an employment agency in the City of Spokane, State of Washington, and are at present so engaged, said agency being carried on under the name and style of Featherstone Labor Agency, and having a license from the City of Spokane, being License No. C1373, to so operate and conduct said business until September 1, 1915, having paid to the City of Spokane the sum of \$100.00 for said license fee.

That the plaintiff, H. C. Willis, has for the fifteen months last past been engaged in carrying on an employment agency in the City of Spokane, State of Washington, and is at present so engaged, having a license from the City of Spokane, being License No. C1392, to so operate and conduct said business until September 10, 1915, having paid to the City of Spokane the sum of \$100.00 for said license fee.

#### IV.

That each and all of the plaintiffs above named are engaged in the employment business in the City of Spokane, Spokane County, Washington, where they and each of them have been so engaged for the time hereinabove set forth, and each of them having maintained and do now maintain an office and place of business for the transaction of such business for the time hereinbefore set forth.

#### V.

8 That in conducting said employment agencies plaintiffs have a large number of regular customers who come to them when out of employment to ascertain where positions can be secured, and who depend and rely upon plaintiffs to furnish them with the necessary information relative to employment. That plaintiffs also have a large number of regular customers who advise and communicate with them from time to time with reference to labor needed at different points in the State of Washington and elsewhere, for different kinds and grades of employment covering and consisting of almost every kind of employment for which labor is needed, and that plaintiffs cause said information so furnished to be advertised and published by means of large blackboards and

placards at their respective places of business in said city, and that upon said information being so advertised and published by plaintiffs large numbers of persons who are seeking employment examine said advertising matter, and if any position is listed which said persons or any of them desire to accept, said fact is made known to plaintiffs and said person is given said position, and charged a fee by the agency furnishing said information, which fee varies in amount in accordance with the salary paid by said position, but in no event is said fee anything larger than a reasonable fee for the service performed by said agency, and only such amount as is agreed upon by contract between the said agency and said person seeking said employment.

That the employment business consists in securing employment for persons desiring to work, and in aiding such persons not only to secure such employment, but to learn at a minimum cost and with the least possible expenditure of time, all the facts and circumstances connected with such employment, including the place where such labor is to be carried on, the person or persons for whom the same is to be performed, the character of business, the conditions of employment there existing, the wages or remuneration paid for the time, the standing of the person, firm or corporation for whom such work and labor is to be performed, and in short, in furnishing such applicants with all of the facts which, but  
9 for the labor performed by these plaintiffs, he would have to investigate and ascertain at his own cost and expenditure of time; that the field of labor, the location of factories, plants and industries of employers of labor in the State of Washington are very diversified and in many instances so scattered and at such remote places from transportation that it is impossible for laboring men to learn of positions which may be open thereat without spending a considerable sum of money to go and investigate the same, and ascertain the conditions as they there exist; that for the purpose of being able speedily to furnish employment to capable, competent and efficient applicants therefor, these plaintiffs ascertain the names, locations and character of business of persons, firms and corporations employing help, make the investigations above set forth, and keep themselves fully informed with reference thereto. Upon receiving an order for any employe or employes in any certain capacity, these plaintiffs attempt to bring the same to the attention of persons desiring the same, all of the above facts and information relative thereto; that by reason of the services performed by these plaintiffs, persons seeking employment are able to learn of the positions open to them as soon as these plaintiffs learn of the same, and are able to secure employment very much more speedily than they would be able to do but for the services rendered by these plaintiffs, and are able to secure all the information concerning the same as above set forth at a very small fraction of the expense which would result to them but for the services rendered by these plaintiffs, and are able to secure the same without any appreciable expenditure of time.

That because of plaintiffs' information with reference to posi-

tions which can be furnished, they are able to supply said laborers with employment without the necessity of said laborers traveling from place to place at great expense in search of positions, and that unless said agencies are allowed to continue as heretofore the

10        said laborers will be obliged to go from house to house and from city to city in search of employment; and that said laborers are to a large extent strangers in the community, and will be unable to find employment or learn where positions can be secured unless said agencies are permitted to continue doing business. That plaintiffs have furnished positions for approximately ninety thousand persons during the last year, and have received applications for employment from at least two hundred thousand laborers, for whom they have been unable to furnish employment.

## VI.

That said agencies have been established and conducted for so long a time that they are now one of the necessary means whereby persons seeking employment are able to secure the same, and unless said agencies are permitted to conduct said business as herein set forth, and charge the persons seeking employment a reasonable fee for the services rendered, said plaintiffs cannot conduct or carry on said agencies, except at a great financial loss and expense, and plaintiffs and each of them will be compelled to abandon said business of conducting said agencies.

## VII.

That in order to remain in the employment business it is necessary to secure accurate and true information as above set forth, and to convey such information fully, honestly and completely to applicants therefor; that unless such information is accurate and reliable, and unless the same is conveyed in strict accordance with the fact, whatever it may be, without any misrepresentation of any kind, name or nature, it is impossible for a person engaged in the employment business to remain therein; that he cannot remain in said business permanently unless he secures by merit and retains by reliability a reputation for accuracy and honesty, and of being one on whose statements applicants may fully and completely rely; otherwise it would be impossible to remain in such business because

11        persons would not and could not deal with one doing otherwise.

That unless a person engaged in the employment business deals honestly and frankly with employers of labor who may request him to secure employes in any capacity, it is impossible for him to remain in business, or to have any business dealings with such employers of labor; that unless he furnished such employers of labor efficient, capable and honest men, or unless he furnishes them with frank, complete and accurate information concerning such employes, he cannot remain in the employment business permanently.

## VIII.

That said employment agencies have been at all times regulated by ordinances passed by the City of Spokane, so that the rights of all persons seeking employment through said agencies have been and are protected and safeguarded; but that there is now in force and effect in the City of Spokane and has been since December 29, 1913, Ordinance No. C1590, a copy of sections 29 to 38 inclusive of which ordinance is hereto attached, marked Exhibit A and hereby referred to and made a part of this complaint. Among other things said ordinance provides that no person shall open or carry on any employment agency or office in the City of Spokane without first having procured a license so to do from said City, paying a fee of one hundred dollars (\$100.00) therefor, which fee is for a one year's license. That no license for a shorter period shall be granted unless a surety company's bond of one thousand dollars is filed with the city clerk, conditioned that any and all valid claims of any and all persons, arising from any transaction or business done under said license shall be paid forthwith. That every employment agency shall keep a register in which shall be entered the names and addresses of employers desiring help through said employment agency; the nature and place of such employment, the date and amount of the payment of each fee, and the name of each applicant for work paying a fee. Such register shall be

at all reasonable hours open to the inspection and examination of the license inspector, the chief of police, and the labor agent of the City of Spokane. That a receipt shall be given to each applicant for employment from whom a fee or other valid consideration is received, each receipt being in words and figures as follows:

"\$. . . . . Office of . . . . .

Licensed Employment Agent,

Spokane, Wash.

Received from . . . . . herein called the applicant, . . . . . Dollars, for which the undersigned has agreed to procure the applicant a position as . . . . . with . . . . . at . . . . ., on an order received the . . . . . day of . . . . ., 19.., at wages of \$. . . . . per . . . . . board \$. . . . ., Lodging \$. . . . . per . . . . .; fare to be paid by . . . . . (here insert applicant or agent, as case may be).

If, without delay, the applicant proceeds to the place of employment and said person refuses or fails to give him work of the character herein stated at the rate of pay herein stated, the undersigned agent will repay to the applicant the amount received and the fare, if any, paid by the applicant from Spokane to the place of employment and return, and also wages at the rate indicated above for the length of time required in the ordinary course of travel in going from Spokane to said place of employment and return.

The undersigned further agrees in the event of any controversy arising between the undersigned and the applicant with reference to the application herein referred to, as a result of which proceedings are commenced before the city council of the City of Spokane, if the said proceedings result in a finding by the city council against the undersigned employment agent, to pay the applicant such witness fees or any other penalties as ordered by the council.

— — —, *Agent.*

13 I hereby consent to the above.

— — —, *Applicant."*

That it shall be unlawful for any employment agent to receive any fee or other valuable thing from any applicant for employment without first stating to said applicant the general nature of the employment, the wages to be paid, the hours of labor, distance from the employment office, the facts as to a strike or other industrial controversy, if one exists, and as to the permanency of the work, and such other general information as will enable the applicant to determine whether the position offered is such a one as he desires to accept. That said employment agent shall also ask the applicant if he has any objections to working at any place or for any employer engaged in the line of work such as is offered by said employment agent; that it shall be unlawful to take money from any applicant for work, or to fill any order unless the order therefore shall have been received or renewed within ten (10) days prior thereto. That no employment agency shall be conducted in a room, or any part thereof, where intoxicating liquors are sold. No fee shall be charged for furnishing employment for any work or contract in which the employment agency or agent is interested; and no fee shall be charged to the applicant for employment where a fee for registration or otherwise shall be accepted of the employer. That under the provisions of said ordinance the business of conducting an employment agency is so regulated that the persons seeking employment are protected from any and all imposition or extortion.

## IX.

That in truth and in fact the business of the employment agent is a legitimate business as much so as is that of the banker, the broker or merchant. The business is not only innocent and innocuous, but is highly beneficial to laborers and all persons availing themselves of such services, because it tends the more quickly

14 to secure labor for the unemployed; that in truth and in fact such business is highly beneficial to the laborer or to the men availing themselves of the benefits thereof, because these plaintiffs are able to place before such applicant or applicants for the same all of the facts and circumstances applicable thereto, at a very small fraction of the cost which such applicant or applicants would have to incur in order otherwise to ascertain the same; that these plaintiffs are able to reduce the cost to the applicant therefor because of the volume of business which they transact, and because of their



acquaintance with conditions generally, and with methods prevailing in the modern business world.

### X.

That these plaintiffs have not, during the time they have been in business as aforesaid, nor have either of them been guilty of any extortion of any kind; that the charge made by plaintiffs for such services as aforesaid are but a very small fraction of the cost which such applicants would be compelled to incur in order to make such investigation alone, irrespective of the time which would be required on the part of such applicants in order to make such investigation; that in addition thereto such applicants are able, through the services of these plaintiffs, to secure employment, if employment can be had, as soon as they apply to these plaintiffs therefor.

That the average charge made by plaintiffs for the services so rendered for the use and benefit of persons seeking employment is approximately the sum of one dollar (\$1.00) for each person furnished, and that such fees are the sole income from such business and necessary to be received by plaintiffs in order to conduct the same.

### XI.

That plaintiffs and each of them in conducting their business have been fully and completely honest and frank with the persons dealing with them, and have furnished them accurate information as aforesaid, and that plaintiffs and each of them have at all times complied with each and all of the provisions of Ordinance No. C1590 of the City of Spokane, each of said plaintiffs operating their said business under and by virtue of the terms of said ordinance.

### XII.

That on the 3d day of July, 1914, there was filed in the office of the Secretary of the State of Washington, Initiative Petition No. 8, petitioning for the submission to the electors of the State of Washington at the general election held therein and throughout the said State on the 3d day of November, 1914, a proposed initiative measure known as "Initiative No. 8," entitled:

"An Act to prohibit the collection of remuneration or fees from workers for the securing of employment or furnishing information leading thereto, and providing a penalty for violation thereof."

That pursuant to said petition there was submitted to the electors of the State of Washington at said general election held therein and throughout the State of Washington, on the 3d day of November, 1914, Initiative Measure No. 8, entitled as aforesaid, which initiative measure is in words, letters and figures as follows, to-wit:

"Be It Enacted by the People of the State of Washington.

Section 1. The welfare of the State of Washington depends on the welfare of its workers and demands that they be protected from

conditions that result in their being liable to imposition and extortion.

The State of Washington therefore exercising herein its police and sovereign power declares that the system of collecting fees from the workers for furnishing them with employment, or with information leading thereto, results frequently in their becoming the victims of imposition and extortion and is therefore detrimental to the welfare of the State.

Section 2. It shall be unlawful for any employment agent, his representative, or any other person to demand or receive either directly or indirectly from any person seeking employment, or from any person on his or her behalf, any remuneration or fee whatsoever for furnishing him or her with employment or with information leading thereto.

Section 3. For each and every violation of any of the provisions of this Act the penalty shall be a fine of not more than one hundred dollars and imprisonment for not more than thirty days."

At said general election so held as aforesaid, a majority  
16 of the electors voting on the question of the adoption thereof,  
voted for the adoption of the same.

### XIII.

That the defendants above named have announced that on or after December 3, 1914, the said date being the date of the taking effect of initiative act pursuant to the Constitution of the State of Washington, they will enforce said initiative as a valid law of the State of Washington, and will compel these plaintiffs and each of them to comply with the terms thereof by arresting the plaintiffs and each of them, and their and each of their agents and servants on each and every occasion they may violate the terms of said initiative act, and that they will continue so to enforce said Act as a valid law of the State of Washington. Plaintiffs believe and therefore allege the fact to be, that such enforcement of such initiative act by the defendants as aforesaid will be continued by them irrespective of any question of its validity until the invalidity thereof, if it shall be held invalid, shall have been adjudged by a court of final jurisdiction thereof that as a result of the enforcement of said act as aforesaid, the business built up by the plaintiffs will be totally and wholly destroyed to the irreparable loss and injury of the plaintiffs.

### XIV.

Plaintiffs and each of them allege and charge that said initiative act above referred to is unconstitutional and void for the following reasons:

(1) It violates the provisions of Section one of the Fourteenth Amendment of the Constitution of the United States, in that it deprives these plaintiffs and each of them of their liberty and property without due process of law, and denies to plaintiffs and each of them the equal protection of the law. Protection of the provisions of said Section one of said 14th mendment to the Constitution of the United

States is hereby especially invoked by these plaintiffs and each of them, and said plaintiffs and each of them insist that by virtue of said provisions said initiative measure is void and cannot be enforced against them or either of them.

(2) Said Act violates the provisions of the Fifth Amendment of the Constitution of the United States in that it deprives the plaintiffs and each of them of liberty and property without due process of law, for the reason that if said act is enforced it will prohibit these plaintiffs and each of them from conducting the business which they have heretofore conducted, and which is a lawful and necessary business.

(3) Said Act is unjust, unreasonable and confiscatory, in that if enforced it will deprive plaintiffs and each of them of their property without due process of law, and deprive plaintiffs and each of them of the equal protection of the law, contrary to and in violation of the Constitution of the United States and of the amendment thereof.

(4) Said Act violates Sections 3 and 12 of Article I of the Constitution of the State of Washington in that it deprives plaintiffs and each of them of liberty and property without due process of law, and deprives plaintiffs and each of them of the equal protection of the law guaranteed by the said sections above referred to.

(5) Said Act is unconstitutional because it deprives plaintiffs and each of them of the liberty and equal protection of the law guaranteed by the Constitution of the United States and of the amendment thereof in that it deprives plaintiffs and each of them of the right to use their faculties in a lawful calling.

(6) Said Act is unconstitutional because it is not a reasonable regulation of said business of employment agencies, but on the contrary is unreasonable, arbitrary, oppressive, discriminatory and prohibitory, and will deprive plaintiffs and each of them of all profits in carrying on their respective businesses, and thereby prevent plaintiffs and each of them from engaging in said business.

(7) That said Act is arbitrary and unnecessarily deprives plaintiffs and each of them of their right and liberty to contract to receive remuneration and wages for work and labor done by them in the employment business, as herein set forth, which business at all times was and now is a lawful and legal business, and deprives plaintiffs and each of them of their right and labor to contract and to receive the profits and fruits of a lawful and legitimate business.

(8) Said Act violates and is in contravention of the provisions of Section 10 of Article I of the Constitution of the United States providing that no State shall pass any law impairing the obligations of contracts, in that it impairs the obligations of contracts with and the rights of said plaintiffs and each of them, to charge applicants for positions a fee for the services rendered, and impairs the right of plaintiffs and each of them to operate and conduct said agencies for the times provided in the licenses secured and paid for by said plaintiffs from the City of Spokane as hereinbefore set forth.

(9) That said Act in its provisions is partial, unreasonable, oppressive, unequal, in restraint of trade, and prohibitory of lawful acts done in the conduct of a lawful business, and is therefore violative of the liberty and rights guaranteed by the provisions of the Constitution of the United States and the amendment thereof.

(10) Said Act takes the property of these plaintiffs, without due process of law, because by virtue of its terms the business which they and each of them have heretofore built up and acquired, which business so built up and acquired by each of the plaintiffs is of the value of five thousand dollars (\$5,000.00), respectively, is wholly arbitrarily and unnecessarily and totally destroyed by the direct operation of the terms of said Act in that the plaintiffs are prohibited from asking or receiving, or contracting to receive, directly or indirectly,

any wages or compensation for work and labor done by them  
 19 therein, as well as the profits and income from their said business as aforesaid, thereby wholly and completely destroying said business and the whole thereof.

(11) Said Act is void because the classification attempted in said Act is arbitrary and discriminating, and is not based upon any just distinction between these plaintiffs and other persons engaged in other lawful and legitimate work, labor or business.

(12) That the penalties, fines and imprisonment provided for the enforcement of said Act, are so onerous, drastic and excessive as to deter the plaintiffs or either of them from violating said act and testing the validity thereof in a court of law.

## XV.

These plaintiffs and each of them have been in the employment business for the respective times hereinbefore mentioned; they and each of them have built up a very valuable business and the value thereof so built up by them and each of them is of the value of at least five thousand dollars (\$5000.00) respectively; that in the employment business the success of the same and the value of the business depends upon the accuracy, and particularly the efficiency, maintained therein; that each of these plaintiffs have customers or patrons who from time to time for a number of years past have been patronizing them, and for whom these plaintiffs have during such time been securing employment as they desired the same. In addition thereto the value of an employment business depends upon the knowledge of the public patronizing the same; that positions can be actually secured at any time through persons engaged in that business; that if these plaintiffs should be compelled to discontinue their business for a period of from four to six months, their respective businesses and the value of the same would be totally lost and destroyed; that the value of said business can be realized and maintained, and the business itself can be maintained only by constantly continuing therein, and being able to furnish the services

20 required by the patrons thereof; that if the defendants above named are permitted to enforce said initiative act above mentioned against these plaintiffs and each of them, these plaintiffs will be

impelled to discontinue their business, because the continued and repeated arrests of the plaintiffs will make it impossible for them to continue therein, and the business which the plaintiffs have built up as aforesaid, and their property therein, and the value of the same, will be wholly and completely destroyed and lost to them even if it should later be adjudged by a court of final jurisdiction that said initiative act above mentioned is void, and in contravention of the Constitution of the United States and the Constitution of the State of Washington, or either of them; that in order to protect the business of the plaintiffs and each of them from absolute destruction during the determination of this cause, it is absolutely necessary that a temporary injunction be entered herein, restraining the defendants above named, and each of them, from enforcing or attempting to enforce said act, either by civil or criminal process, and in the event this court shall decline to grant a temporary injunction pending the determination of this cause, the defendants above named and each of them will enforce said act against these plaintiffs and each of them, will arrest these plaintiffs and each of them, and their and each of their agents engaged in such business on each and every occasion when these plaintiffs or their said agents shall receive any wages, compensation, or fee for the work and labor done and performed by them, or for the positions secured for applicants therefor by them, and the giving of information concerning the same so furnished to such applicants.

### XIX.

That should the plaintiffs or any of them be deprived even for a short time of the right to continue their respective business as aforesaid, and to collect wages, remuneration and fees therefor, they and each of them would lose a very large number of customers or patrons, and would each lose a very substantial sum of money, none of which could in any event be recovered by them in the event it should finally be held in a court of competent jurisdiction that said act was unconstitutional and void.

Inasmuch as plaintiffs and each of them have no adequate remedy in the premises by virtue of the common law, and can obtain relief only in a court of equity where matters and things of the kind and character hereinbefore mentioned are properly cognizable and relievable, and to the end that they and each of them may have relief which they and each of them can obtain only in a court of equity, they and each do pray:

1. That W. V. Tanner, as Attorney General of the State of Washington, and George H. Crandall, as Prosecuting Attorney of Spokane County, Washington, and each of them, and all other persons be enjoined and restrained provisionally, preliminarily and perpetually by the order and injunction of this court, from bringing directly or indirectly any proceedings at law or in equity for the enforcement of said Initiative No. 8 aforesaid, and from causing the plaintiffs or any of their officers, agents, employes or servants from being arrested for violating the terms and provisions of said Act, and from taking any other action, or in any other manner interfering with the plain-



tiffs, or either of them, or their respective businesses by reason of said initiative, and that an order to show cause issue herein upon the application of the plaintiffs herein, directed to the above named defendants, requiring them and each of them to show cause why a temporary injunction should not issue as prayed for herein, and that a temporary restraining order may issue pending the hearing of said show cause order.

2. That upon the final hearing the aforesaid initiative may be declared to be unconstitutional, illegal and void, and that a perpetual injunction be issued restraining the enforcement thereof as hereinabove prayer for.

22 (Signed)

CANNON & FERRIS,  
JOHN M. CANNON,  
*Attorneys for Plaintiffs.*

UNITED STATES OF AMERICA,  
*Eastern District of Washington, ss:*

J. S. Ross, being first duly sworn, on oath deposes and says: That he is one of the plaintiffs named in the foregoing Bill of Complaint, that he has read the foregoing Bill of Complaint, and knows the contents of the same, and the same is true to his own knowledge, except as to matters therein stated to be alleged on information and belief, as to which matters he believes them to be true; that he makes this verification on behalf of said plaintiffs.

(Signed)

J. S. ROSS.

Subscribed and sworn to before me this 25th day of November, 1914.

(Signed)

G. M. FERRIS,  
*Notary Public for the State of Washington,*  
*Residing at Spokane, Washington.*

[SEAL.]

23

PLAINTIFFS' EXHIBIT "A."

*Employment Agency.*

Section 29. The term "employment agency" or "office" in this ordinance shall mean and include the business of keeping an intelligence office, employment bureau or other agency for procuring work or employment or acting as agent for the procurement of work or employment, and the term "employment agent" herein used shall mean and include any person, who, for a fee or other consideration, shall procure or attempt to procure work or labor for another, provided, however, that the provisions of this ordinance relating to employment agencies shall not apply to any organization not conducted for profit, and where no fee for procuring or assisting to procure work in excess of that sufficient to maintain the running expenses of the employment branch of such organization, shall be received by such organization, and when such organization shall have obtained a permit from the city council to carry on such work,

and provided further, that until such organization shall obtain, and except as such organization shall have a permit from the city council to carry on the business of an employment agent, it and all persons participating in the employment work of such organization shall be subject to the provisions and penalties herein provided.

Section 30. No person shall in the City of Spokane open or carry on any employment agency or office nor act as an employment agent without first having procured a license therefor from the city council nor without having fully complied with the provisions of this ordinance relating to employment agencies.

Section 31. No such license shall hereafter be granted until such person shall have paid to the city treasurer the sum of one hundred (\$100.00) dollars for one year's license, and no license shall be granted for a shorter period than one year, nor shall any license hereafter be granted until such person shall have filed with the city clerk of the city of Spokane a surety company bond in the sum of one thousand (\$1,000.00) dollars. Such bond shall be conditioned:

1. That upon demand of the city council the surety will forthwith pay any and all valid claims of any and all persons arising from any transaction or business done under said license.

2. That the said principal will fully perform all the terms, conditions and requirements of this ordinance and of all receipts issued for employment fees and of all ordinances of the city of Spokane relating to employment agencies, whether in force at the time of the execution of said bond, or subsequently passed, and shall fully comply with all the laws of the state of Washington relative to employment agents.

Whenever and as often as the claims against the surety upon said bond shall amount to five hundred (\$500.00) dollars, or more, the employment agent shall within ten days after notice by the city clerk file a new and additional bond with the city clerk in the sum of five hundred (\$500.00) dollars, conditioned and provided as above, and in case of his failure so to do his license shall ipso facto be terminated.

Section 32. Every employment agent shall keep a register in which shall be entered the names and addresses of all employers desiring help through the said employment agent, the nature and place of such employment, the date and amount of the payment of each fee, and the name of each applicant for work paying a fee. Such register shall be at all reasonable hours open to the inspection and examination of the license inspector, the chief of police and the labor agent of the city of Spokane.

It shall be unlawful for any employment agent to refuse any of said officers the examination of said register.

Section 33. Every person who shall hereafter receive a license to conduct an employment agency or office shall give to each applicant for employment from whom a fee or other valuable consideration shall be received for procuring employment a receipt in form as follows:

"\$.....

Office of .....

Licensed Employment Agent,  
Spokane, Wash.

Received from....., herein called the applicant.....dollars, for which the undersigned has agreed to procure the applicant a position as.....with.....at....., on an order received the.....day of....., 191.., at wages of \$....per....., board \$....., lodging \$.....per.....fare to be paid by..... (Here insert applicant or agent as the case may be).

If, without delay, the applicant proceeds to the place of employment and said person refuses or fails to give him work of the character herein stated at the rate of pay herein stated, the undersigned agent will repay to the applicant the amount received and the fare, if any, paid by the applicant from Spokane to the place of employment and return, and also wages at the rate indicated above for the length of time required in the ordinary course of travel in going from Spokane to said place of employment and return.

The undersigned further agrees in the event of any controversy arising between the undersigned and the applicant with reference to the application herein referred to, as a result of which proceedings are commenced before the city council of the city of Spokane, if the said proceedings result in a finding by the city council against the undersigned employment agent, to pay the applicant such witness fees or any other penalties as ordered by the council.

— — —, *Agent.*

I hereby consent to the above.

— — —, *Applicant."*

26 Upon the reverse side of the receipt shall be printed the following, to be filled in by the party to whom the applicant was sent for employment when employment is refused:

"The bearer....., presented this receipt on the.....day of....., 191.., and was not employed because .....

.....  
(Signature.)"

In order to obtain the benefits of this agreement the applicant for employment shall, when failing to receive the employment without unreasonable delay, present at the office of the employment agent the receipt, either with the blanks on the back thereof properly signed by said employer, or with the affidavit of the applicant attached or endorsed, stating that the applicant was unable to obtain the signature of the employer and that he applied in person to the employer at the place named for employment, and without the

applicant's fault failed to procure the same at the stated rate of pay. Upon presentation of such receipt or affidavit the employment agent shall pay to the applicant the sums in this section provided for.

Section 34. It shall be unlawful for any employment agent to receive any fee or other valuable thing from any applicant for employment without first stating to said applicant the general nature of the employment, the wages to be paid, the hours of labor, distance from the employment office, the facts as to a strike or other industrial controversy, if one exists, and as to the permanency of the work, and such other general information as will enable the applicant to determine whether the position offered is such a one as he desires to accept.

The employment agent shall also ask the applicant if he has objections to working at any place or for any employer engaged in the line of work such as is offered by the employment agent.

Section 35. It shall be unlawful for any employment agent  
27 to take money from any applicant for work or to fill any order unless the order therefor shall have been received or renewed within ten days prior thereto.

Section 36. It shall be unlawful, for any person, firm or corporation, or any employe thereof, to conduct an employment agency in a room or any part thereof where intoxicating liquors are sold.

Section 37. Except by express permission of the city council no employment agency or agent shall charge a fee for furnishing employment for any work or contract in which the employment agency or agent is or may be in any manner interested, nor shall any fee be charged to the applicant for employment where a fee for registration or otherwise shall be accepted of the employer.

Section 38. It shall be unlawful for any employment agent to enter into any understanding with any person, firm or corporation, for whom labor is furnished, or to be furnished, providing for a division of employment fees, or whereby there is an understanding between such employment agent and such person, firm or corporation, for whom labor is furnished or to be furnished, that the laborer accepting such work shall have employment for only a definite period or that he shall only labor until a certain amount is earned and then be discharged, unless such understanding is also made known by such employment agent to the laborer accepting such employment at the time or before accepting the same, and is endorsed upon the receipt provided for by section 35 of this ordinance.

Endorsements: Complaint. Filed November 25, 1914. W. H. Hare, Clerk.

28 In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2064.

JOE ADAMS et al., Plaintiffs,

vs.

W. V. TANNER, Attorney General of the State of Washington, and George H. Crandall, Prosecuting Attorney of Spokane County, State of Washington, Defendants.

*Subpoena in Equity.*

The President of the United States of America, Greeting:

To W. V. Tanner, Attorney General of the State of Washington, and George H. Crandall, Prosecuting Attorney of Spokane County, State of Washington:

You are hereby commanded, that you be and appear in said District Court of the United States aforesaid, at the court room of said court, in the City of Spokane, Washington, twenty days from the issuing thereof, to answer a Bill of Complaint filed against you in said court by Joe Adams; Albert M. Macho; W. Mathewson; Lucile C. Greever; J. W. Buhler and J. C. Mottaz, copartners doing business under the firm name and style of Home Employment Agency; J. T. Pierce and J. D. Beattie, copartners doing business under the firm name and style of National Employment Agency; Herman Rae and F. L. Buell, copartners doing business under the firm name and style of Scandinavian-American Employment Agency; W. J. Lawrence; W. A. Miller; J. S. Ross and J. W. Rogers, copartners doing business under the firm name and style of Rogers & Ross; Effie C. Travers; Charles Lewis and Augustus Anderson, copartners doing business under the firm name and style of Lewis & Anderson Labor Agency; F. E. Featherstone and J. L. Featherstone, copartners doing business under the firm name and style of Featherstone Labor Agency; and H. C. Willis, citizens of the State of Washington, and to do and receive what the

29 court shall have considered in that behalf. And this you are not to omit, under the penalty of Five Thousand Dollars.

Witness the Honorable Frank H. Rudkin, Judge of the United States District Court for the Eastern District of Washington, and the seal of said District Court this 25th day of November, 1914.

[SEAL.]

(Signed)

W. H. HARE, Clerk.

Memorandum Pursuant to Rule 12, Supreme Court, United States.

You are hereby required to file your answer or other defense in the above mentioned suit on or before the 20th day after service, excluding the day thereof, at the clerk's office of said court, pursuant to said Bill; otherwise the said Bill will be taken pro confesso.

(Signed)

W. H. HARE, Clerk.



*Marshal's Return Thereon.*

UNITED STATES OF AMERICA,  
*Eastern District of Washington, ss:*

I hereby certify that I served the within writ by delivering and leaving a true copy thereof with W. V. Tanner and George H. Crandall at Seattle, Washington, November 28th, 1914. Fees, \$4.24.

(Signed) JOHN M. BOYLE,  
*United States Marshal,*  
 By MORTON D. WAINWRIGHT,  
*Deputy.*

Endorsements: Subpoena in Equity. Filed in the U. S. District Court for the Eastern District of Washington, December 8, 1914. W. H. Hare, Clerk. By S. M. Russell, Deputy.

30 In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2064.

JOE ADAMS, ALBERT M. MACHO, W. MATHEWSON, LUCILE C. Greever; J. W. Buhler and J. C. Mottaz, Copartners Doing Business under the Firm-name and Style of Home Employment Agency; J. T. Pierce and J. D. Beattie, Copartners Doing Business under the Firm-name and Style of National Employment Agency; Herman Rae and F. L. Buell, Copartners Doing Business under the Firm-name and Style of the Scandinavian-American Employment Agency; W. J. Lawrence, W. A. Miller; J. S. Ross and J. W. Rogers, Copartners Doing Business under the Firm-name and Style of Rogers & Ross; Effie C. Travers; Charles Lewis and Augustus Anderson, Copartners Doing Business under the Firm-name and Style of Lewis & Anderson Labor Agency; F. E. Featherstone and J. L. Featherstone, Copartners Doing Business under the Firm-name and Style of Featherstone Labor Agency, and H. C. Willis, Plaintiffs,

vs.

W. V. TANNER, Attorney General of the State of Washington, and George H. Crandall, Prosecuting Attorney of Spokane County, State of Washington, Defendants.

*Motion and Affidavits.*

To the Honorable Frank H. Rudkin, Judge of the District Court of the United States, for the Eastern District of Washington, Northern Division:

Come now the above named plaintiffs and allege and show the court as follows:

That there has been instituted in the above entitled court an

action by bill of complaint against W. V. Tanner, as attorney general of the State of Washington, and George H. Crandall, as prosecuting attorney of Spokane County, Washington, the object and purpose of said action being to secure from this Honorable Court an order that the said defendants above mentioned, and all other persons, be restrained and enjoined provisionally, preliminarily and perpetually by the order and injunction of this court from bringing

31 directly or indirectly any proceedings at law or in equity for the enforcement of that certain law known and referred to as Initiative Measure No. 8, entitled as follows:

"An Act to prohibit the collection of remuneration or fees from workers for the securing of employment or furnishing information leading thereto, and providing a penalty for violation thereof," said Act having been adopted at the last general election held in the State of Washington on the 3rd day of November, 1914, and which law will become effective on the 3rd day of December, 1914, and from causing the plaintiffs, or any of their officers, agents, employes or servants, from being arrested for violation of the terms and provisions of said Act, and from taking any other action or in any manner interfering with the plaintiffs, or either of them or their business, by reason of said Act, and praying that an order to show cause herein issue upon application of the plaintiffs herein directed to the above named defendants, and each of them, requiring them and each of them to show cause why a temporary injunction should not issue as prayed for herein and for other equitable relief.

Plaintiffs further allege and show to this Honorable Court that the Act hereinbefore referred to is contrary to the terms, provisions and protection of the Constitution of the United States and amendments thereof and is therefore void, all of which is more fully alleged, set out and explained in the bill of complaint filed herein, and that said Act is also contrary to the terms, provisions and protection of the Constitution of the State of Washington, and is therefore void, all of which is more fully alleged, set out and explained in the bill of complaint filed herein.

That said act becomes effective and a law of the State of Washington on December 3rd, 1914, and the defendants and each of them now threaten to and will, unless enjoined and restrained by this Honorable Court, prosecute the complainants, their officers, agents, employees and servants for violation of its provisions, all of which

32 is more fully set out in the bill of complaint herein filed, to which reference is hereby made and by which reference said bill of complaint is made a part of this application.

That by reason thereof and for the further reason that before notice of the time and place for the hearing of said temporary or interlocutory injunction can be heard by this Honorable Court and be determined by three judges in the manner provided by law, the defendants will cause irreparable damage and loss to the plaintiffs as they now threaten to do, and plaintiffs move the court for an order directed to the defendants and each of them, citing and requiring them to appear before this Honorable Court and such other judges as this court shall designate, at a time and place to be fixed

by this court according to law, then and there to show cause, if any they have, why a temporary or interlocutory injunction should not issue against them and each of them in the manner hereinbefore stated. And for the reasons hereinbefore set forth the plaintiffs further move the court for a temporary restraining order remainable in force until the hearing and determination of the application for an interlocutory injunction restraining the defendants and each of them in the manner that an interlocutory injunction is sought.

This application is based upon the bill of complaint on file herein and upon the affidavits attached hereto and filed herewith.

(Signed)

CANNON & FERRIS,

JOHN M. CANNON,

*Attorneys for Plaintiffs.*

33 STATE OF WASHINGTON,  
*County of Spokane, ss:*

Joe Adams, being first duly sworn, on oath deposes and says: That he is one of the plaintiffs in the above entitled action; that he conducts an employment agency at 405 Trent Avenue; that said employment agency has been conducted under the firm name and style of Adams & Goodwin, but that said Goodwin has withdrawn from said business.

That for the last eight years this affiant has been engaged in the employment agency business in the city of Spokane, Spokane County, Washington.

That affiant is the holder of License No. C1058, issued by the City of Spokane, authorizing him to conduct said business in the said city of Spokane from January 1st, 1914, to December 31, 1914, inclusive, and that he and his said partner have paid the one hundred dollars (\$100.00) license fee therefor to said city. That the said business is regulated by city ordinance of the city of Spokane which provides for punishment for the failure to comply with the regulations prescribed therein, and that this affiant has never been convicted of any offense during all the time of his said business operations.

That during the eight years while this affiant has been engaged in said business in said city of Spokane, affiant has furnished positions of employment to from 7,500 to 20,000 persons per year; and that he has received applications for positions to the number of five thousand (5,000) in a single month.

That the average fee received by this affiant from employes to whom employment has been furnished is one dollar (\$1.00) for each employment. That where the positions furnished were temporary only, this affiant has seldom charged a fee. That where the position furnished was especially desirable, bringing large salary, and for a long period of employment, the fee charged has been from \$2.00 to \$5.00, and in rare cases in excess of \$5.00, dependent in such cases on the desirability and kind of position furnished. That about one-half of the positions furnished by this affiant have

34 been furnished without any compensation whatever, and under conditions as follows: That in a large number of

cases customers for labor furnished to affiant's office would desire more employes than the number from whom affiant could procure a fee, and that in order to retain such customers under such circumstances, and in order to furnish employment to needy persons who were without the means of advancing a fee, this affiant has been in the habit of furnishing employment without charge to such persons as would present themselves for employment and as would be unable to pay a fee therefor.

That affiant has in said business furnished employment to all classes of skilled and unskilled laborers, including foremen, time-keepers, and others.

That if deprived of the right to charge or receive a fee or compensation from the employe to whom he gives employment, his entire source of revenue from said business will have been destroyed. That his only income from said business, and from the moneys invested in advertising and building up said business as aforesaid is and has been the fees received from the employes to whom he has given work. That the enforcement of Initiative Measure No. 8, submitted to the people and voted upon at the last general election in the state of Washington would result in the total loss and destruction of his entire business and of the profits accruing from time and money invested in advertising and building up said business.

That at great cost to himself he has established a reputation and acquaintance with employers and employes throughout the north-west and has invested in advertising and building up said business approximately \$12,000 during the time he has been so engaged in the employment business.

(Signed)

JOE ADAMS.

Subscribed and sworn to before me this 24th day of November, 1914.

[SEAL.]

(Signed)

G. M. FERRIS,

*Notary Public for the State of Washington.*

*Residing at Spokane, Washington.*

35      STATE OF WASHINGTON,  
            *County of Spokane, ss:*

Albert M. Macho, being first duly sworn, deposes and says: That he is one of the plaintiffs in the above entitled action; that he is the owner and manager of that certain employment agency known as the Macho Employment Agency, located at 415 Trent Avenue in the City of Spokane, Spokane County, Washington.

That for the past fifteen years this affiant has been engaged in the employment agency business and during all of said time has conducted an employment office in said city.

That affiant is the holder of License No. C616, issued by said city of Spokane, authorizing him to conduct said business in said city of Spokane from January 1st, 1914, to December 31, 1914, inclusive, and that he paid the regular license fee of one hundred dollars (\$100.00) therefor to said city. That the said business is regulated by city ordinance of the city of Spokane which provides

for punishment in case of failure to comply with the regulations prescribed therein, and that this affiant has never been convicted of any offense during all the time of his said business operations.

That during the fifteen years while this affiant was engaged in said business in said city affiant has furnished positions of employment to the average number of eleven thousand positions per year, and that he has received applications for positions to the average number of approximately seventeen hundred per month.

That the average fee received by this affiant from employes to whom employment has been furnished is eighty-five (85) cents for each employment. That where the positions furnished were temporary only this affiant has seldom charged a fee. That where the position furnished was especially desirable, bringing large salary, and for a long period of employment, the fee charged has been from \$2.00 to \$5.00, and in rare cases in excess of \$5.00, dependent in such cases on the desirability and kind of position furnished.

36 That about one-half of the positions furnished by this affiant have been furnished without any compensation whatsoever, and under conditions as follows: That in a large number of cases customers for labor furnished to affiant's office would desire more employes than the number from whom affiant could procure a fee, and that in order to retain such customers under such circumstances, and in order to furnish employment to needy persons who were without the means of advancing a fee, this affiant has been in the habit of furnishing employment without a charge to such persons as would present themselves for employment and as would be unable to pay a fee therefor.

That this affiant furnishes employment for farm laborers, woodmen, sawmill laborers, railway and railway construction laborers; that he has approximately nine hundred regular farm customers who look to him each year for labor and to whom he furnishes employment; that he has a large number of persons who look to him regularly for employment.

That if deprived of the right to charge or receive a fee or compensation from the employe to whom he gives employment, his entire source of revenue from said business will have been destroyed. That his only income from said business, and from the moneys invested in advertising and building up said business as aforesaid, is and has been the fees received from the employes to whom he has given work. That the enforcement of Initiative Measure No. 8, submitted to the people and voted upon at the last general election in the state of Washington, would result in the total loss and destruction of his entire business and of the profits accruing from time and money invested in advertising and building up said business.

That at great cost to himself he has established a reputation and acquaintance with employers and employes throughout the north-west and has invested in advertising and building up said business approximately \$46,750 during the time he has been so engaged in the employment business.

37 (Signed)

ALBERT M. MACHO.

Subscribed and sworn to before me this 23d day of November,

[SEAL.]

(Signed) G. M. FERRIS,  
*Notary Public for the State of Washington,  
Residing at Spokane, Washington.*

38 STATE OF WASHINGTON,  
*County of Spokane, ss:*

W. Mathewson, being first duly sworn, deposes and says: That he is one of the plaintiffs in the above entitled action; that he is the owner and manager of that certain employment agency known as the Mathewson Employment Agency, located at 226 N. Bernard Street in the city of Spokane, Spokane County, Washington.

That for the past four years this affiant has been engaged in the employment agency business in said city.

That affiant is the holder of License No. C1338, issued by said city of Spokane, authorizing him to conduct said business in said city until August 6, 1915, and that he paid the regular license fee of one hundred dollars (\$100.00) therefor to said city. That said business is regulated by city ordinance of the city of Spokane, which provides for punishment in case of failure to comply with the regulations prescribed therein; and that this affiant has never been convicted of any violation of said ordinance during all the time of said business operations.

That during the four years while this affiant was engaged in said business in said city affiant has furnished positions of employment to from two to fourteen thousand persons per year, and has received applications for positions from approximately five thousand in a single month.

That where a charge has been made by this affiant to persons receiving employment from him or through him, the average charge has been about one dollar (\$1.00) each, but that in a large number of instances this affiant has furnished employment to persons who were unable to pay or advance any fee for said service, and that for each person furnished employment by this affiant, including those furnished employment without charge, the average fee would not exceed fifty cents (50c).

39 That the kinds of employment furnished by affiant are as follows: time keepers, engineers, foremen, cooks, blacksmiths, carpenters and common laborers.

That if deprived of the right to charge or receive a fee or compensation from the employe to whom he gives employment, his entire source of revenue from said business will have been destroyed. That his only income from said business, and from the moneys invested in advertising and building up said business as aforesaid is and has been the fees received from the employes to whom he has given work. That the enforcement of Initiative Measure No. 8, submitted to the people and voted upon at the last general election in the State of Washington, would result in the total loss and de-

tion of his entire business and of the profits accruing from time money invested in advertising and building up said business. hat this affiant has expended more than two thousand dollars (2000.00) in advertising and building up his said business and business reputation.

(Signed)

W. MATHEWSON.

subscribed and sworn to before me this 24th day of November, 1914.

(Signed)

G. M. FERRIS,

[SEAL.]

*Notary Public for the State of Washington,*

*Residing at Spokane, Washington.*

STATE OF WASHINGTON,

*County of Spokane, ss:*

Lucile Crosby Greever, being first duly sworn, on oath states: That she is one of the plaintiffs named in the above entitled action; That she is the owner and manager of that certain employment agency known as Woman's Domestic Guild, and located at 824 1/2 Riverside Avenue, Spokane, Spokane County, Washington.

That for the past ten years this affiant has been engaged in said employment agency business in said city of Spokane.

That she is the holder of License No. C471, issued by the city of Spokane, authorizing her to conduct her said business in said city until December 31, 1914, and that she has paid the regular license fee of one hundred dollars (\$100.00) therefor to said city. That said business is regulated by city ordinance of the city of Spokane, which provides for punishment in case of failure to comply with the regulations prescribed therein, and that she has never been convicted of any offense or violation of any ordinance during all the time of her said business operations.

That during the ten years while this affiant was engaged in said business in said city affiant has furnished positions of employment to girls and women to the average number of from 2500 to 5000 per year and that she has furnished employment to women and girls during the past year to the number of 2600.

That the average fee received by this affiant from employes to whom employment has been furnished is \$1.25 for each employment. That for domestic help her usual charge has been five per cent of the first month's salary, and for teachers, stenographers and high class positions her customary charge is based on a fee of ten per cent of the first month's salary.

This affiant's business is mainly to furnish employment for women and girls in the positions of teachers, stenographers, clerks, domestic help, hotels, restaurants and domestic farm labor, and that she has a large number of persons who look to her regularly for employment. That she has been careful not to recommend any but those who are worthy, and that because thereof she has built up a large and valuable clientage among persons especially who desire domestic or other female help.



That if deprived of the right to charge or receive a fee or compensation from the employe to whom she gives employment, her entire source of revenue from said business will have been destroyed. That her only income from said business, and from the moneys invested in advertising and building up said business as aforesaid is and has been the fees received from the employes to whom she has given work. That the enforcement of Initiative Measure No. 8, submitted to the people and voted upon at the last general election in the State of Washington, would result in the total loss and destruction of her entire business and of the profits accruing from time and money invested in advertising and building up said business.

That during the ten years she has been engaged in said business she has paid out as the actual cost of advertising said business, and building up of said reputation the sum of six thousand dollars (\$6000.00), exclusive of the time spent in advertising and building up of said business.

(Signed)

LUCILE CROSBY GREEVER.

Subscribed and sworn to before me this 24th day of November, 1914.

(Signed)

G. M. FERRIS,

[SEAL.]

*Notary Public in and for the State of Washington, Residing at Spokane, Washington.*

42 STATE OF WASHINGTON,  
*County of Spokane, ss:*

J. W. Buhler, being first duly sworn, deposes and says: That he is one of the plaintiffs in the above entitled action; that he, together with the plaintiff, J. C. Mottaz, are copartners engaged in the business of employment agency at 125 Bernard Street, Spokane, Spokane County, Washington, under the name and style of Home Employment Agency.

That he has been engaged in said business for a term of nine years in said city. That affiant is the holder of License No. C929, issued by the city of Spokane, authorizing his said firm to conduct said business in said city until March 1, 1915, and that his said firm paid to said city the license fee of one hundred dollars (\$100.00) therefor. That affiant or his said business partner have never been convicted of any violation of any city ordinance under which said business operated.

That during the nine years while this affiant has been engaged in said business his firm has furnished employment to the average number of from two to four thousand persons per year, and has received as high as nine hundred applications in a single month.

That the average fee received by this affiant from employes to whom employment has been furnished is \$1.25.

That affiant's said firm furnished employment to woodsmen, railroad laborers, farm hands, cooks and hotel help.

That if deprived of the right to charge or receive a fee or compensation from the employe to whom he gives employment, his

the source of revenue from said business will have been destroyed. That his only income from said business, and from the moneys invested in advertising and building up said business as aforesaid is and has been the fees received from the employees to whom he has given work. That the enforcement of Initiative Measure No. 8, submitted to the people and voted upon at the last general election in the State of Washington, would result in the total loss and destruction of his entire business and of the profits accruing from time and money invested in advertising and building up said business.

That this affiant and his business associates have built up their said business reputation and acquaintance with employers and employees at a cost of more than five thousand dollars (\$5000.00) to themselves.

(Signed)

J. W. BUHLER.

Subscribed and sworn to before me this 24th day of November, 1914.

(Signed)

[SEAL.]

G. M. FERRIS,

*Notary Public for the State of Washington,*

*Residing at Spokane, Washington.*

4

STATE OF WASHINGTON,

*County of Spokane, ss:*

J. T. Pierce, being first duly sworn, deposes and says: That he is one of the plaintiffs above named, and together with J. D. Beattie, his business partner, is conducting the business of employment agency known as National Employment Agency, at 303 Trent Avenue, in the City of Spokane, Spokane County, Washington. That his said copartnership firm has been engaged in said business for one year. That said firm is the holder of License No. C739, issued by said City of Spokane, authorizing them to conduct said business in said city until January 12, 1915, and that he and his said business associate paid the regular license fee of one hundred dollars (\$100.00) therefor to said city. That said business is regulated by city ordinance of the city of Spokane which provides for punishment in case of failure to comply with the regulations prescribed therein, and that this affiant or his said business associate have never been convicted of any violation of said ordinance during all of their said business operations.

That during the year so engaged in said business affiant's firm has furnished positions of employment to the number of approximately five thousand (5000) persons, and have received applications for positions to the number of three thousand (3000) in a single month.

That affiant's company has furnished fire fighters to the United States Forestry Department to the number of over 1900 during the year 1914. That during existing conditions the Forestry Department requires immediate service on short notice of a large number of selected men, and have not time during the fire season to investigate labor conditions, and cannot well spare the necessary men

to establish a forestry service for the purpose of handling fire fighters. That Henry S. Graves, Forester of the United States Department of Agriculture for forestry service, under date of November 17, 1914, in a letter addressed to Honorable Miles Poindexter, United States Senator from Washington, has stated in part

45 as follows:

"Under the conditions existing there was an urgent and immediate demand for selected men. There was no time in the midst of the fire season to investigate labor conditions at Spokane, and it was hardly possible to spare the necessary men to establish a Forest Service overhead organization in Spokane to handle fire fighters. The commercial agency had already given satisfactory assistance in other instances and appeared to offer the most effective and economical means of securing men of the kind desired, and at the time and in the number required. The incentive of one dollar per head secured by the labor agency was a sufficient stimulus to it to make it possible for the Forest officers to definitely count on the filling of their orders for men. At the same time the investment of the United States, has given special attention to the wants guaranty that after paying from four to ten dollars for the transportation of a fire fighter the Service could be reasonably sure that he would work."

This affiant in view of the requirements of the Forestry Department of the United States, has given special attention to the wants of that Department and has expended time and money in establishing the business of filling orders from the Forestry Department on short notice by the selection of capable men for that department, and unless permitted to collect a fee from the persons applying for such positions this affiant and his agency will be in the future unable to fill such orders and unable to continue its said established business of furnishing fire fighters to the Forestry Department of the United States Government. That a copy of the letter herein referred to is attached hereto, marked Exhibit A and made a part hereof.

That the average fee received by this affiant from employes who were furnished employment is one dollar (\$1.00).

That this affiant's said firm furnishes employment to all classes of skilled and unskilled labor, time keepers, cooks, blacksmiths, engineers, firemen, bookkeepers, and more especially fire fighters for the United States Forestry Service, and that he has a large number of persons who look to his said firm regularly for employment.

That if deprived of the right to charge or receive a fee or compensation from the employe to whom he gives employment, his entire source of revenue from said business will have been destroyed. That his only income from said business, and from the moneys

46 invested in advertising and building up said business as aforesaid is and has been the fees received from the employes to whom he has given employment. That the enforcement of Initiative Measure No. 8, submitted to the people and voted upon at the last general election in the State of Washington, would result in the total loss and destruction of his entire business and of the

profits accruing from time and money invested in advertising and building up said business.

That at a cost of approximately two thousand dollars (\$2000) this affiant and his said business associate have built up and established a reputation for themselves in said business, which said reputation is a valuable asset.

(Signed

J. T. PIERCE.

Subscribed and sworn to before me this 24th day of November, 1914.

(Signed)

G. M. FERRIS,

[SEAL.]

*Notary Public for the State of Washington,*

*Residing at Spokane, Washington.*

47

# EXHIBIT "A."

United States Department of Agriculture,  
Forest Service,  
Washington.

D-1, Fire

NOVEMBER 17, 1914.

Hon. Miles Poindexter, United States Senate.

MY DEAR SENATOR: Further reference is made to your letters of September 9 and 22 transmitting, respectively, communications from Mr. W. D. Wheaton, Labor Agent for the City of Spokane, Wash., and from Mr. J. T. Pierce, of the National Employment Company of the same city.

I am informed by the District Forester at Missoula, Mont., that he has recently gone over the matter of hiring fire fighters at Spokane personally with Mr. Wheaton, the city Labor Agent. As he explained to Mr. Wheaton, the services of a commercial agency were employed to secure fire fighters for a number of reasons which made this seem the only practicable course. Under the conditions existing there was an urgent and immediate demand for selected men. There was not time in the midst of the fire season to investigate labor conditions at Spokane, and it was hardly possible to spare the necessary men to establish a Forest Service overhead organization in Spokane to handle fire fighters. The commercial agency had already given satisfactory assistance in other instances and appeared to offer the most effective and economical means of securing men of the kind desired, and at the time and in the number required. The incentive of \$1 per head secured by the labor agency was a sufficient stimulus to it to make it possible for the Forest officers to definitely count on the filling of their orders for men. At the same time the investment of \$1 each by the men served to some extent as a guaranty that after paying from \$4 to \$10 for the transportation of a fire fighter the Service could be reasonably sure that he would work.

In his conference with Mr. Wheaton, the District Forester assured him that the Forest Service would be glad to give him every opportunity in the future to supply men, but that since his experience

with commercial agencies had proven very satisfactory it would undoubtedly be necessary for him to resort to them in the future as in the past for assistance in serious emergencies. It was impracticable therefore for the District Forester to promise Mr. Wheaton that he would depend entirely upon the Municipal Agency.

Very sincerely yours,

HENRY S. GRAVES, *Forester.*

48      STATE OF WASHINGTON,  
            *County of Spokane, ss:*

Herman Rae, being first duly sworn, deposes and says: That he is a member of the copartnership conducting business under the firm name and style of Scandinavian-American Employment Agency. That said copartnership consists of himself and F. L. Buell. That said agency is located at 255 Trent Avenue, Spokane, Spokane County, Washington.

That for the past ten years this affiant has been engaged in the employment agency business, and during all of said time has conducted an employment office in said city.

That affiant's copartnership is the holder of License No. C470, issued by the city of Spokane, authorizing said copartnership to conduct said business in said city of Spokane until December 31, 1914, and that said copartnership has paid the regular license fee of one hundred dollars (\$100.00) therefor to the said city of Spokane. That the said business is regulated by ordinance of the city of Spokane which provides for punishment in case of failure to comply with the regulations thereof, and that this affiant has never been convicted of any offense during all of the time of his said business operations.

That during the last year while this affiant has been engaged in said business he has furnished positions of employment to the average number of approximately four thousand persons; that he has received applications to the number of about nine hundred per month.

That the average fee received by this affiant from employes to whom employment has been furnished is \$1.25 for each employment.

That this affiant as a member of said copartnership has furnished employment mostly to time keepers, cooks, railroad laborers, farm laborers, woodsmen and sawmill laborers. That he has a large number of persons who look regularly for employment.

49      That if deprived of the right to charge or receive a fee or compensation from the employe to whom he gives employment, his entire source of revenue from said business will have been destroyed. That his only income from said business, and from the moneys invested in advertising and building up said business as aforesaid is and has been the fees received from the employes to whom he has given work. That the enforcement of Initiative Measure No. 8, submitted to the people and voted upon at the last general election in the State of Washington would result in the total loss and destruction of his entire business and of the profits accruing from time and money invested in advertising and building up said business.

That he has paid in advertising alone approximately four hundred dollars (\$400.00) per year.

(Signed)

HERMAN RAE.

Subscribed and sworn to before me this 24th day of November, 1914.

(Signed)

G. M. FERRIS,

*Notary Public for the State of Washington,*

[SEAL.]

*Residing at Spokane, Washington.*

50 STATE OF WASHINGTON,

*County of Spokane, ss:*

W. J. Lawrence, being first duly sworn, deposes and says: That he is one of the plaintiffs in the above entitled action; that he is the owner and manager of that certain Lawrence Employment Agency, located at 125 N. Stevens Street, in the city of Spokane, Spokane County, Washington.

That for the past six years this affiant has been engaged in the employment agency business, and during all of said time has conducted said business in the city of Spokane, Washington. That affiant is the holder of License No. C498, issued by said city of Spokane, authorizing him to conduct said business from January 1, 1914, to December 31, 1914, and that he has paid the regular license fee of one hundred (\$100.00) therefor to said city.

That said business is regulated by city ordinance of the said city of Spokane, which provides for punishment in case of failure to comply with the regulations prescribed therein, and that this affiant has never been convicted of any offense during all the time of his said business operations.

That during the six years while this affiant was engaged in said city of Spokane, said affiant has furnished positions of employment to the number of from 2400 to 4500 per year, and has furnished employment to 2492 persons during the past year. That he has received applications to the number of about 6000 in a single month.

That the average fee received by this affiant from employes to whom employment has been furnished is \$1.50 for each employment.

That this affiant has furnished employment to all classes of skilled and unskilled laborers, and more especially for cooks, engineers and woodsmen.

That if deprived of the right to charge or receive a fee or compensation from the employe to whom he gives employment, his

entire source of revenue from said business will have been

51 destroyed. That his only income from said business, and from the moneys invested in advertising and building up said

business as aforesaid is and has been the fees received from the employes to whom he has given work. That the enforcement of Initiative Measure No. 8, submitted to the people and voted upon at the last general election in the State of Washington, would result in the total loss and destruction of his entire business and of the profits

accruing from time and money invested in advertising and building up said business.

That at a great cost to himself he has established an acquaintance and reputation with employers and employes throughout the northwest, a large number of which said employes look to him regularly for employment, and that he has invested in advertising and building up said business approximately ten thousand dollars.

(Signed)

W. J. LAWRENCE,

Subscribed and sworn to before me this 24th day of November, 1914.

(Signed)

G. M. FERRIS,

*Notary Public for the State of Washington,*

[SEAL.]

*Residing at Spokane, Washington.*

52

STATE OF WASHINGTON,

*County of Spokane, ss:*

G. D. Bowler, being first duly sworn, on oath deposes and says: That W. A. Miller is one of the plaintiffs in the above entitled action, and is the owner of employment agency known as the Northern Pacific Employment Agency, located at 323½ Trent Avenue, Spokane, Washington. That said Miller is a resident and citizen of the city of St. Paul, State of Minnesota, and that this affiant is the local manager in the city of Spokane, State of Washington, of the said Northern Pacific Labor Agency owned by the said Miller, and that for the past two years this affiant has been engaged as manager of the said plaintiff Miller's employment agency, on a percentage basis, conducting the said branch office of the said plaintiff in the city of Spokane.

That affiant has conducted the said business during the present year under license issued by the city of Spokane, which said license is No. C800, and does not expire until December 31, 1914, and that this affiant as such manager has paid the regular license fee of one hundred dollars (\$100.00) to said city. That the said business is regulated by city ordinance of the city of Spokane, which provides for punishment in case of failure to comply with the regulations prescribed therein, and that this affiant has never been convicted of any offense during all the time of his said business operations.

That during the two years affiant has been engaged in said business in said city as aforesaid he has furnished positions of employment to from five to ten thousand persons each year, and has received applications for positions during the month of July, 1914, to the number of eighteen hundred.

That the average fee received by this affiant as such manager for the business of the said W. H. Miller is one dollar for each employment. That in a large number of cases this affiant has furnished such

positions of employment without charge where the applicants were unable to pay a fee therefor, and where affiant knew of positions for a larger number of persons than those from whom he might receive a fee.

53



That the class of employment furnished by this affiant includes railroad section hands, extra gang laborers, ranch hands, track foremen, wood cutters, tie makers and laborers for railroad construction work. That he has a large number of persons who look to him regularly for employment, and to whom he regularly furnishes employment.

That if deprived of the right to charge or receive a fee or compensation from the employe to whom he gives employment, his entire source of revenue from said business will have been destroyed. That his only income from said business, and from the moneys invested in advertising and building up said business as aforesaid is and has been the fees received from the employes to whom he has given work. That the enforcement of Initiative Measure No. 8, submitted to the people and voted upon at the last general election in the State of Washington, would result in the total loss and destruction of his entire business and of the profits accruing from time and money invested in advertising and building up said business.

That this affiant as the manager of the said business of the plaintiff, W. A. Miller, has at great cost to said Miller established a reputation and acquaintance for the said Northern Pacific Labor Agency with employers and employes throughout the northwest, and has invested in advertising the sum of approximately one thousand dollars (\$1,000.00) per year.

(Signed)

G. D. BOWLER.

Subscribed and sworn to before me this 24th day of November, 1914.

(Signed)

G. M. FERRIS,

*Notary Public for the State of Washington,*

[SEAL.]

*Residing at Spokane, Washington.*

54

STATE OF WASHINGTON,

*County of Spokane, ss:*

J. S. Ross, being first duly sworn, deposes and says: That he is a member of the firm of Rogers & Ross, copartners and plaintiffs in the above entitled action; that said copartnership is the owner and manager of that certain employment agency located at 307 Trent Avenue, in the city of Spokane, Spokane County, Washington.

That for the past two years he has been engaged in the employment agency business, and during all of said time has conducted an employment office in said city of Spokane and State of Washington. That affiant's copartnership is the holder of License No. C807, issued by the city of Spokane, authorizing them to conduct said business in said city of Spokane until February 1, 1915, and that said copartnership paid the regular license fee of one hundred dollars (\$100.00) therefor to said city. That said business is regulated by city ordinance of the city of Spokane, which provides for punishment in case of failure to comply with the regulations prescribed

therein, and that this affiant, or his said business partner, have never been convicted of any offense during all the time of his said business operations.

That during the two years while this affiant was engaged in said business in said city his firm has furnished positions of employment to approximately ten thousand (10,000) people, and has had applications for employment in a single month to the approximate number of five thousand.

That the average fee received by this affiant from employes to whom employment has been furnished is seventy-five cents (75¢).

That this affiant's said firm has furnished employment for railroad and mill laborers and for lumbermen.

That if deprived of the right to charge or receive a fee or compensation from the employe to whom he gives employment, his entire source of revenue from said business will have been destroyed.

55 That his only income from said business, and from the moneys invested in advertising and building up said business as aforesaid is and has been the fees received from the employes to whom he has given work. That the enforcement of Initiative Measure No. 8, submitted to the people and voted upon at the last general election in the State of Washington, would result in the total loss and destruction of his entire business and of the profits accruing from time and money invested in advertising and building up said business.

That at great cost to themselves said copartnership has established a reputation and acquaintance with employers and employes throughout the northwest, and has invested in advertising and building up said business approximately five thousand dollars (\$5,000.00)

(Signed)

J. S. ROSS.

Subscribed and sworn to before me this 24th day of November 1914.

(Signed)

G. M. FERRIS,

*Notary Public for the State of Washington,*

*Residing at Spokane, Washington.*

56 STATE OF WASHINGTON,  
County of Spokane, ss:

Effie C. Travers, being first duly sworn, on oath deposes and says: That she is one of the plaintiffs in the above entitled action; that she is the owner and manager of that certain employment agency known as the Red Cross Employment Agency, located at 219 1/2 Stevens Street, in the city of Spokane, Spokane County, Washington.

That said business was conducted by herself and her husband previous to the death of her said husband, and that either personally or together with her husband she has been interested in said business in the city of Spokane for seventeen years.

That she is the holder of License No. C499, issued by the city of Spokane, authorizing her to conduct said business in said city.

from January 1, 1914, to January 1, 1915, and that she paid to said city the regular license fee of one hundred dollars (\$100.00) therefor. That the said business is regulated by city ordinance of the city of Spokane, which provides for punishment in case of failure to comply with the regulations prescribed therein, and that this affiant has never been convicted of any offense or violation thereof during the time of her said business operations.

That the average fee received by this affiant from employes to whom employment has been furnished is \$1.25.

That this affiant has furnished employment for all classes of skilled and unskilled labor, and that she has a large number of persons who look to her regularly for employment.

That if deprived of the right to charge or receive a fee or compensation from the employe to whom she gives employment, her entire source of revenue from said business will have been destroyed. That her only income from said business, and from the moneys invested in advertising and building up said business as aforesaid is and has been the fees received from the employes to whom she has given work. That the enforcement of Initiative Measure No. 8, submitted to the people and voted upon at the last general election in the State of Washington, would result in the total loss and destruction of her entire business and of the profits accruing from time and money invested in advertising and building up said business.

That during the years she has been interested in said employment business it has been built up at an approximate cost of one thousand dollars (\$1,000.00) per year in advertising and building up said business and business reputation.

(Signed)

EFFIE C. TRAVERS.

Subscribed and sworn to before me this 24th day of November, 1914.

(Signed)

G. M. FERRIS,

*Notary Public for the State of Washington.*

[SEAL.]

*Residing at Spokane, Washington.*

58 STATE OF WASHINGTON,  
*County of Spokane, ss:*

Charles Lewis, being first duly sworn, deposes and says: That he is one of the plaintiffs above named and a member of the firm of Lewis & Anderson, copartners consisting of this affiant and Augustus Anderson, who is also one of the plaintiffs above named. That said copartners are the owners and managers of that certain employment agency known as the Lewis & Anderson Labor Agency, located at 411 Trent Avenue, Spokane, Spokane County, Washington.

That for the past eight years this affiant has been engaged in the employment agency business, and during all of said time has conducted said employment business in said city. That affiant's said copartnership is the holder of License No. C469, issued by the

city of Spokane, authorizing them to conduct said business in said city until December 31, 1914, and that said copartners paid the regular fee of one hundred dollars (\$100.00) therefor to said city. That the said business is regulated by city ordinance of the city of Spokane which provides for punishment in case of failure to comply with the provisions prescribed therein, and that this affiant or his said partner have never been convicted of any violation of said ordinance during the time of his said business operations.

That during the eight years while this affiant was engaged in said business in said city affiant's office has furnished employment to from seven to twenty-five thousand persons per year. That during the year last past his firm gave employment to about seven thousand men. That his said firm has received applications for employment to the number of approximately six thousand in a single month.

That the average fee received by this affiant from employes to whom employment has been given is seventy-five cents (75¢) for each employment. That where the position was temporary only this affiant has seldom charged a fee. That where the position

59 furnished was especially desirable, bringing a large salary, and for a long period of employment the fee charged has been usually from two to five dollars. That about one-half of the positions furnished by this affiant and by his said company have been furnished without any compensation whatever to laborers who were unable to advance any fee, but who applied for positions at a time when affiant knew of employers who desired such labor.

That this affiant's said company furnished employment for experienced labor, foreman, time keepers, stenographers and for all classes of mechanics, kitchen help and common laborers, and that they have a large number of persons who look to them regularly for employment.

That if deprived of the right to charge or receive a fee or compensation from the employe to whom he gives employment, his entire source of revenue from said business will have been destroyed. That his only income from said business, and from the moneys invested in advertising and building up said business as aforesaid is and has been the fees received from the employes to whom he has given work. That the enforcement of Initiative Measure No. 8, submitted to the people and voted upon at the last general election in the State of Washington, would result in the total loss and destruction of his entire business and of the profits accruing from time and money invested in advertising and building up said business.

That during the eight years that this affiant has been associated in the business, he and his business associate have established and built up a reputation and acquaintance with employers and employes throughout the northwest at a cost of approximately fifteen thousand dollars (\$15,000.00).

(Signed)

CHAS. LEWIS.

Subscribed and sworn to before me this 24th day of November, 1914.

(Signed)

G. M. FERRIS.

*Notary Public for the State of Washington,*

[SEAL.]

*Residing at Spokane, Washington.*

60 STATE OF WASHINGTON,  
*County of Spokane, ss:*

F. E. Featherstone, being first duly sworn, deposes and says: That he is one of the plaintiffs in the above entitled action, and together with his copartner, J. L. Featherstone, is the owner of and conducting the business of the Featherstone Labor Agency, located at 301 Trent Avenue, city of Spokane, Spokane County, Washington. That said copartnership has been engaged in said employment agency business in said county and state for the past six years.

That affiant's said copartnership is the holder of License No. C1373, issued by the city of Spokane, authorizing said copartnership to conduct said business in said city until September 1, 1915, and has paid to said city the regular license fee of one hundred dollars (\$100.00) therefor. That said business is regulated by city ordinance of the city of Spokane, which ordinance provides for punishment in case of failure to comply with the regulations prescribed therein, and that this affiant or his said partner have never been convicted of any violation of said ordinance during all the time of their said business operations.

That during the six years while affiant's said firm has been engaged in said business in said city they have furnished positions of employment to the number of between five and seven thousand each year. That during the past year they have furnished employment to the number of 5,538, and that they have received approximately two thousand applications in a single month.

That the usual charge for furnishing employment to laborers by said firm has been one dollar (\$1.00) and a charge of five per cent of the first month's wages has been made for furnishing employment other than that of common labor.

That the kinds of employment furnished by affiant's firm are as follows: for engineers, firemen, brakemen, carpenters, conductors, foremen, timekeepers, clerks, cooks, painters, paper hangers  
61 and common laborers.

That if deprived of the right to charge or receive a fee or compensation from the employe to whom he gives work, his entire source of revenue from said business will have been destroyed. That his only income from said business, and from the moneys invested in advertising and building up said business as aforesaid is and has been the fees received from the employes to whom he has given work. That the enforcement of Initiative Measure No. 8, submitted to the people and voted upon at the last general election in the State of Washington, would result in the total loss and destruction of his entire business and of the profits accruing from time and money invested in advertising and building up said business.

That this affiant and his said copartner have expended more than \$4,500.00 in actual money paid out in different forms of advertising during the past six years while engaged in said business, and have expended a large amount of labor in building up and advertising their said business and business reputation.

(Signed)

F. E. FEATHERSTONE.

Subscribed and sworn to before me this 24th day of November, 1914.

(Signed)

G. M. FERRIS,

*Notary Public for the State of Washington,*

[SEAL.]

*Residing at Spokane, Washington.*

62 STATE OF WASHINGTON,  
*County of Spokane, ss:*

H. C. Wills being first duly sworn, deposes and says: That he is one of the plaintiffs in the above entitled action, and is the owner of and conducts business of employment agency at 205 Granite Block in the city of Spokane, Spokane County, Washington, and has been engaged in said business for the past fifteen months.

That affiant is the holder of License No. C1392, issued by the city of Spokane authorizing him to continue and conduct said business until September 19, 1915, and that he has paid the regular license fee of one hundred dollars (\$100.00) therefor to said city.

That during the time that affiant has been so engaged in business he has furnished employment to approximately 600 persons and has had as high as 500 applicants in a single month.

That the kind of labor furnished through his employment agency is as follows: waiters, waitresses, chambermaids and general hotel and restaurant help.

That he has made an average charge of five per cent on the first month's salary to persons to whom he has furnished such positions. That he has expended in advertising said business approximately one hundred dollars (\$100.00) in cash.

That although his business has been operated under city ordinance regulating the manner of conducting said business, he has never been accused of any violation of said ordinance.

That if deprived of the right to charge or receive a fee or compensation from the employees to whom he gives employment, his entire source of revenue from said business will have been destroyed. That his only income from such business and from the moneys invested in advertising and building up said business, is and has been the fees received from the employees to whom he has furnished employment.

(Signed)

H. C. WILLIS.

63 Subscribed and sworn to before me this 24th day of November, 1914.

(Signed)

WALTER A. WHITE,

[SEAL.] *Notary Public in and for the State of Washington, Residing at Spokane, Washington.*

Endorsements: Motion and Affidavits. Filed November 25, 1914.  
W. H. Hare, Clerk.

64 In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2064.

JOE ADAMS, ALBERT M. MACHO, W. MATHEWSON, LUCILE C. Greever; J. W. Buhler and J. C. Mottas, Copartners Doing Business under the Firm-name and Style of Home Employment Agency; J. T. Pierce and J. D. Beattie, Copartners Doing Business under the Firm-name and Style of National Employment Agency; Herman Rae and F. L. Buell, Copartners Doing Business under the Firm-name and Style of the Scandinavian-American Employment Agency; W. J. Lawrence, W. A. Miller; J. S. Ross and J. W. Rogers, Copartners Doing Business under the Firm-name and Style of Rogers & Ross; Ellie C. Travers; Charles Lewis and Augustus Anderson, Copartners Doing Business under the Firm-name and Style of Lewis & Anderson Labor Agency; F. E. Featherstone and J. L. Featherstone, Copartners Doing Business under the Firm-name and Style of Featherstone Labor Agency, and H. C. Willis, Plaintiffs,

vs.

W. V. TANNER, Attorney General of the State of Washington, and George H. Crandall, Prosecuting Attorney of Spokane County, State of Washington, Defendants.

*Show Cause Order.*

This cause came on duly and regularly for hearing before the court on application of the above named plaintiffs for an interlocutory injunction, enjoining the defendants and each of them, and all other persons from bringing, either directly or indirectly, any proceeding at law or in equity for the enforcement of that certain law known and referred to as Initiative Measure No. 8, entitled as follows:

"An Act to prohibit the collection of remuneration or fees from workers for the securing of employment or furnishing information leading thereto, and providing a penalty for violation thereof."

Said act having been adopted at the last election held in the State of Washington on the 3d day of November, 1914; and from causing the plaintiffs, their officers, agents, servants or employees to be arrested, and from taking any other action, or in any  
65 other manner interfering with the plaintiffs or either of them or their business by reason of said law; and that an order to show cause issue herein upon the application of plaintiffs, directed to the above named defendants, requiring them to show cause why a temporary injunction should not issue as prayed for herein, and the court being fully advised in the premises.

It is hereby ordered that the defendants, and each of them, be and appear before the above entitled court sitting in the Western District of Washington, Northern Division, at Seattle, Washington,



where said cause has been transferred for hearing on the 30th day of November, 1914, at the hour of two o'clock in the afternoon of said day, then and there to show cause, if any they have, why they and each of them should not be enjoined and restrained in the manner hereinbefore stated;

It is further ordered by the court that a copy of this order be served upon said defendants and each of them forthwith.

Done in open court this 25th day of November, 1914.

(Signed)

JEREMIAH NETERER, *Judge.*

*Marshal's Return on Service of Writ.*

UNITED STATES OF AMERICA,

*Western District of Washington, ss:*

I hereby certify and return that I served the annexed order to show cause on the therein-named W. V. Tanner, by handing to and leaving a true and correct copy thereof with W. V. Tanner, Attorney General of the state of Washington, personally, at Tacoma, Washington, in said district, on the 25th day of November, A. D. 1914.  
Fees, \$2.12.

(Signed)

JOHN M. BOYLE,

*U. S. Marshal.*

By JOHN T. SECRIST, *Deputy.*

66

Endorsements: Show Cause Order. Filed November 27,  
1914. W. H. Hare, Clerk.

67 In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2064.

JOE ADAMS, ALBERT M. MACHO, W. MATHEWSON, LUCILE C. Greever; J. W. Buhler and J. C. Mottas, Copartners Doing Business under the Firm-name and Style of Home Employment Agency; J. T. Pierce and J. D. Beattie, Copartners Doing Business under the Firm-name and Style of National Employment Agency; Herman Rae and F. L. Buell, Copartners Doing Business under the Firm-name and Style of the Scandinavian-American Employment Agency; W. J. Lawrence, W. A. Miller; J. S. Ross and J. W. Rogers, Copartners Doing Business under the Firm-name and Style of Rogers & Ross; Effie C. Travers; Charles Lewis and Augustus Anderson, Copartners Doing Business under the Firm-name and Style of Lewis & Anderson Labor Agency; F. E. Featherstone and J. L. Featherstone, Copartners Doing Business under the Firm-name and Style of Featherstone Labor Agency, and H. C. Willis, Plaintiffs,

vs.

W. V. TANNER, Attorney General of the State of Washington, and George H. Crandall, Prosecuting Attorney of Spokane County, State of Washington, Defendants.

*Order Transferring Cause for Hearing.*

This cause came on for hearing on this — day of November, 1914, on application of the plaintiffs for a temporary injunction and show cause order, and it appearing to the court that this is an emergency matter requiring an immediate hearing thereon, and the Honorable Frank H. Rudkin, Judge of the above entitled court, being temporarily absent, and the court being fully advised in the premises.

It is Hereby Ordered that said cause be and the same is hereby transferred to the District Court of the United States, for the Western District of Washington, Northern Division, for hearing, upon said application for said temporary injunction and show cause order, and said application to be heard on November 30, 1914, at two o'clock p. m., at Federal court room, Seattle, before Wm. B. Gilbert, Circuit Judge, and two District Judges, pursuant to provisions

68 of Section 266, Judicial Code.

Dated this — day of November, 1914.

(Signed) JEREMIAH NETERER, Judge.

Endorsements: Order. Filed November 27, 1914. W. H. Hare, Clerk.

69 In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2064.

JOE ADAMS, ALBERT M. MACHO, W. MATHEWSON, LUCILE C. Greever; J. W. Buhler and J. C. Mottaz, Copartners Doing Business under the Firm-name and Style of Home Employment Agency; J. T. Pierce and J. D. Beattie, Copartners Doing Business under the Firm-name and Style of National Employment Agency; Herman Rae and F. L. Buell, Copartners Doing Business under the Firm-name and Style of the Scandinavian-American Employment Agency; W. J. Lawrence, W. A. Miller; J. S. Ross and J. W. Rogers, Copartners Doing Business under the Firm-name and Style of Rogers & Ross; Effie C. Travers; Charles Lewis and Augustus Anderson, Copartners Doing Business under the Firm-name and Style of Lewis & Anderson Labor Agency; F. E. Featherstone and J. L. Featherstone, Copartners Doing Business under the Firm-name and Style of Featherstone Labor Agency, and H. C. Willis, Plaintiffs,

vs.

W. V. TANNER, Attorney General of the State of Washington, and George H. Crandall, Prosecuting Attorney of Spokane County, State of Washington, Defendants.

*Stipulation as to Controverting Affidavits and Affidavits.*

Whereas, certain controverting affidavits by E. P. Marsh, James Bradford, A. H. Grout and D. P. Kenyon were heretofore filed by the defendants in cause No. 49, in the District Court of the United States for the Western District of Washington, Northern Division, and entitled R. B. Wiseman and C. A. Cedar et al. vs. W. V. Tanner et al. and whereas said affidavits are claimed to be material by the defendants in this action and a part of their defense herein;

Whereas, at the argument of this cause in this court, on the 30th day of November, 1914, it was orally stipulated by and between the solicitors for these plaintiffs and the solicitors for these defendants that said affidavits might be considered as filed in and a part of the records and files of this court and cause:

70 Now, therefore, in pursuance of said oral stipulation, it is hereby mutually agreed and stipulated by and between Cannon & Ferris and John M. Cannon, solicitors for plaintiffs herein, and W. V. Tanner, one of the solicitors for the defendants herein, that said affidavits, copies of which are attached hereto and marked Exhibits A, B, C and D, may be considered as filed by the defendants in this action and a part of the records and files herein.

Dated this 10th day of December, 1914.

(Signed)

CANNON & FERRIS,  
JOHN M. CANNON,  
*Solicitors for Plaintiffs.*  
W. V. TANNER,  
*Solicitor for Defendants.*

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 49.

B. WISEMAN and C. A. CEDAR, Copartners in Business under the Firm-name and Style of Wiseman & Cedar; W. C. McNichol and John Rae, Copartners in Business under the Firm-name and Style of W. C. McNichol & Rae; Fred Lilyman and C. E. Renard, Copartners in Business under the Firm-name and Style of Lilyman & Renard; P. J. Hanley and F. W. Hopkins, Copartners in Business under the Firm-name and Style of Hanley Employment Agency; George W. Crane, W. H. Uplinger, James Engleson, and Claude B. Luther, Copartners in Business under the Firm-name and Style of Black Cat Employment Company; H. S. Clarke; John W. Crawford and James R. Crawford, Copartners in Business under the Firm-name and Style of Crawford Brothers; J. J. Wilms and A. K. Adelberg, Copartners in Business under the Firm-name and Style of Wilms Labor Agency; M. A. Bettis; L. L. Keys; George W. Thorne and S. S. Barash, Copartners in Business under the Firm-name and Style of Seattle Hotel News; Mabel Campbell and W. C. Moore, Copartners in Business under the Firm-name and Style of Campbell & Moore; H. A. Pratt; W. Vernon Underwood and W. A. Miller, Copartners in Business under the Firm-name and Style of Northern Pacific Employment Agency, and S. H. Garvin, Plaintiffs,

vs.

W. V. TANNER, Attorney General of the State of Washington, and John F. Murphy, as Prosecuting Attorney of King County, State of Washington, Defendants.

(EXHIBIT "A.")

*Intervening Affidavit of E. P. Marsh in Behalf of Defendants Herein Against the Granting of a Temporary Restraining Order or Injunction.*

STATE OF WASHINGTON,

County of King, ss:

E. P. Marsh, of lawful age being first duly sworn, on his oath deposes and says:

I am the President of the State Federation of Labor, an organization embracing every organized trade of the state except the Railroad Brotherhoods, and have held that position for nearly two years past; for five years prior to assuming the said position was manager of the Everett Labor Temple, a place where men, organized and unorganized alike, drifted to constantly with reports of industrial hardships imposed upon them; during all that time I have been in contact with laboring men of all classes, skilled

and unskilled; during the past two years I have been constantly traveling about the State of Washington visiting every industrial centre and many of the smaller towns.

That years ago my attention was called to the evils of private employment agencies, and it has been more forcibly brought to my attention within the last half dozen years. It is often hard to get evidence of actual fraud against these agencies that will stand court test. This is in part due to reluctance and inability of victims of employment agents to appear in court. Again, it is also due to the pseudo-fraudulent character of representations made by the agencies. I have witnessed court cases where but little doubt existed in the minds of those present that misrepresentation had been made to the workmen, but in these cases contracts signed by the workmen were so cunningly worded that they, often illiterate and mentally deficient, failed to realize that they assumed responsibility of finding positions as represented, and that usually such applicants or workers, in signing such contracts, had absolutely no understanding or knowledge as to the real meaning of the language and intent of such contract or the terms and conditions therein embodied.

It should be borne in mind that a considerable percentage of the men patronizing employment agencies are of a helpless, despondent, drifting, aimless and poor type of men, constituting at once a bad condition socially and a distinct menace to industrial welfare of the state and society.

That I have visited scarcely a section of this state that I have not heard stories of alleged collusion between private employment agencies and foremen, superintendents, or other agents of employers, the system being apparently to keep men employed for a brief period of time, discharge them to make room for others, the  
73 obvious deduction being that the fee was divided between such agencies and such foremen of employers, and that "the more men employed the bigger the split."

That cases of alleged injustice on the part of private employment agencies have been all too numerous and circumstantial in this state to admit of a denial that fraud has been perpetrated. I was of the opinion at one time that rigid supervision by city governments over private employment agencies would do away with the evils complained of. Experience has proven that our cities have been unable to cope with the wily, unscrupulous private employment agent. There seems to be many ways of taking advantage of the "down-and-outer" looking for a job that stop just short of the border line of criminal liability, and the employment shark has apparently learned them all. It is my firm conviction, based upon years of study and observation, that there is but one way to wipe out the evils complained of—that is by abolishing the system of exacting any fee whatsoever from the workmen as the price of furnishing employment. It seems to me to be a case where the innocent agent, if innocent agent there be, must suffer with the guilty that our ideals of citizenship may be upheld.

The migratory worker is always a serious social problem; it is bad enough that he is migratory from choice due to environment

and upbringing; the evil is intensified when he becomes migratory and a bitter, society-hating man because someone, through personal need, must fleece him early and often of his hard-earned dollars on the employment office route.

The church, the home and the school are the bulwarks of the nation, the foundation stones upon which society rests. The migratory worker contributes to none of these, and it is society's business to find determining causes. If the system of private employment agencies as we know them *to* be one of these determining causes—and I am convinced that it is—for the well-being of society it should be abolished.

The emphatic approval given by the voters of this state to the initiative measure abolishing the exaction of a fee from workmen for furnishing employment while other apparently meritorious measures were defeated, would seem to indicate that public opinion has been aroused and crystalized in this state to the necessity of wiping out the paid employment agency system as the surest means of putting a stop to industrial and social injustice and abuse.

I have read D. P. Kenyon's controverting affidavit herein and know the contents thereof, that my state-wide experience and study, and the opportunity for observation, lead me to the conclusion that all of the statements contained in said affidavit relative to the evils, mischiefs, false representations, deception and other conditions therein set forth are quite general throughout the state and are the natural and inevitable out-growth of the system of private employment agencies.

(Signed)

E. P. MARSIL.

Subscribed and sworn to before me this 30th day of November, 1914.

[SEAL.]

(Signed)

R. B. McCLINTON.

*Notary Public in and for the State of Washington.*

*Residing at Seattle.*

75 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 49.

R. B. WISEMAN and C. A. CEDAR, Copartners in Business under the Firm-name and Style of Wiseman & Cedar; W. C. McNichol and John Rae, Copartners in Business under the Firm-name and Style of W. C. McNichol & Rae; Fred Lilyman and C. E. Renard, Copartners in Business under the Firm-name and Style of Lilyman & Renard; P. J. Hanley and F. W. Hopkins, Copartners in Business under the Firm-name and Style of Hanley Employment Agency; George W. Crane, W. H. Uplinger, James Engleson, and Claude B. Luther, Copartners in Business under the Firm-name and Style of Black Cat Employment Company; H. S. Clarke; John W. Crawford and James R. Crawford, Copartners in Business under the Firm-name and Style of Crawford Brothers; J. J. Wilms and A. K. Adelberg, Copartners in Business under the Firm-name and Style of Wilms Labor Agency; M. A. Bettis; H. L. Keys; George W. Thorne and S. S. Barash, Copartners in Business under the Firm-name and Style of Seattle Hotel News; Mabel Campbell and W. C. Moore, Copartners in Business under the Firm-name and Style of Campbell & Moore; H. A. Pratt; W. Vernon Underwood and W. A. Miller, Copartners in Business under the Firm-name and Style of Northern Pacific Employment Agency, and S. H. Garvin, Plaintiffs,

vs.

W. V. TANNER, Attorney General of the State of Washington, and John F. Murphy, as Prosecuting Attorney of King County, State of Washington, Defendants.

(Exhibit "B.")

*Controverting Affidavit of James E. Bradford in Behalf of Defendants Hercin Against the Granting of a Temporary Restraining Order or Injunction.*

STATE OF WASHINGTON,  
County of King, ss:

James E. Bradford, of lawful age, being first duly sworn, on oath deposes and says:

That for about three (3) years last past I have been and now am the duly elected, qualified and acting Corporation Counsel for the City of Seattle, said county and state, and that for about three years and a half prior to said time was an assistant Corporation  
76 Counsel in said office.

That during all of said time said Legal Department of the City of Seattle has often been called upon to aid the Labor Commissioner of the City of Seattle, and the Labor Department, to aid in the adjustment and settlement of complaints or claims lodged in



said Labor Department by employes, prospective or actual, and applicants to the plaintiffs in the above entitled cause, and other employment agencies in the City of Seattle, for work.

That I have read and know the contents of the controverting affidavit of D. P. Kenyon on file herein; that I personally know that a good deal of time of said Legal Department during all of said period has been consumed in aiding the said Labor Department in the adjustment and settlement of such complaints, and that very much time and attention has been given by said Labor Department to the adjustment and settlement of such claims;

That as a general rule such applicants have first made their complaints directly to the plaintiffs in the above entitled cause and to other agencies in said city, and upon the refusal, failure or neglect of such agencies to adjust or settle such complaints, the applicants or workers have sought the assistance of said Labor Department, and in all cases where said department was unable to adjust matters, the Legal Department was called upon to assist therein.

That during said period many of such applicants and workers made their complaints directly to said Legal Department, whereupon both of said departments have sought with said plaintiffs and their employment agencies in the city to settle and adjust such complaints.

That during said time said employment agencies have, among others, resorted to various forms of artifices, false representations and fraud to, and in dealing with such employes, for the purpose of extracting and extorting money and fees from such applicants; that such false representations, wrongs and injustice consist, among other things, in statements to such applicants as to the amount of wages they will secure, the sanitary and other conditions in and about the camps at the places of work, the number of hours they will be required to labor each day, the price and character of board and lodging furnished by the employers, the relative distances and miles to the various places of work, and the cost and nature of such transportation, and other similar matters.

(Signed)

JAMES E. BRADFORD.

Subscribed and sworn to before me this 30th day of November, 1914.

[SEAL.]

(Signed)

R. B. McCLINTON,

*Notary Public in and for the State of Washington.*

*Residing at Seattle.*

78 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 49.

R. B. WISEMAN and C. A. CEDAR, Copartners in Business under the Firm-name and Style of Wiseman & Cedar; W. C. McNichol and John Rae, Copartners in Business under the Firm-name and Style of W. C. McNichol & Rae; Fred Lilyman and C. E. Renard, Copartners in Business under the Firm-name and Style of Lilyman & Renard; P. J. Hanley and F. W. Hopkins, Copartners in Business under the Firm-name and Style of Hanley Employment Agency; George W. Crane, W. H. Uplinger, James Engleson, and Claude B. Luther, Copartners in Business under the Firm-name and Style of Black Cat Employment Company; H. S. Clarke; John W. Crawford and James R. Crawford, Copartners in Business under the Firm-name and Style of Crawford Brothers; J. J. Wilms and A. K. Adelberg, Copartners in Business under the Firm-name and Style of Wilms Labor Agency; M. A. Bettis; H. L. Keys; George W. Thorne and S. S. Barash, Copartners in Business under the Firm-name and Style of Seattle Hotel News; Mabel Campbell and W. C. Moore, Copartners in Business under the Firm-name and Style of Campbell & Moore; H. A. Pratt; W. Vernon Underwood and W. A. Miller, Copartners in Business under the Firm-name and Style of Northern Pacific Employment Agency, and S. H. Garvin, Plaintiffs,

vs.

W. V. TANNER, Attorney General of the State of Washington, and John F. Murphy, as Prosecuting Attorney of King County, State of Washington, Defendants.

(EXHIBIT "C.")

*Controverting Affidavit of A. H. Grout in Behalf of Defendants Herein Against the Granting of a Temporary Restraining Order or Injunction.*

STATE OF WASHINGTON,  
County of King, ss:

A. H. Grout, of lawful age, being first duly sworn, on his oath deposes and says:

That for more than eighteen (18) years last past, I have been and now am, Secretary of the Municipal Civil Service Commission and Ex-officio Labor Commissioner in and for said city.

79 That in the latter office and capacity I have charge of the management of public employment office of the city of Seattle and supervise the enforcement of city ordinances and law relating thereto, and especially relating to the conduct of the private employment agencies in said city and I act as general super-

visor over the work of Mr. D. P. Kenyon, whose controverting affidavit is on file herein.

That I have read and know the contents of the controverting affidavit of Mr. D. P. Kenyon and that each and every allegation, statement and thing therein set forth are, in every respect, true, and in addition to the specific matters set forth therein, I have had many similar experiences with private employment agencies and persons seeking employment from said private employment agencies of the city of Seattle to those set forth in the affidavit of D. P. Kenyon on file herein.

That based upon my long experience in connection with said municipal labor department and by observation and study, I reached the conclusion prior to the adoption of the said initiative measure that private employment business as conducted in the city of Seattle and in the state of Washington, by reason of the many inducements and temptations to said agencies to exploit the laborers in order to get fees for giving employment was pernicious and not conducive to the welfare of said state and was subversive not only of the interests of the large laboring classes but also indirectly of all persons in said state, and I also reached the conclusion prior to the adoption of said initiative measure that the only efficient method of regulating the private employment agencies of said state was to prohibit the charging by said agencies of fees to persons seeking employment, and after consultation with other persons engaged in similar official positions to that which I hold, I find that it is the general opinion that the prohibition of the taking of fees from those seeking employment in the only efficient manner of regulating said private employment agencies and the curing and preventing of the many abuses which arise in the conducting of said business as heretofore practiced.

80 That the authority of your affiant as Labor Commissioner and of said D. P. Kenyon, whose affidavit is on file herein, to come into contact and deal with private employment agencies is set forth and embodied in Ordinance No. 15855, entitled:

"An Ordinance to license and regulate certain trades and occupations in the City of Seattle and providing penalties for the violation thereof.",

approved April 25, 1907, and by express reference thereto, said ordinance is made a part of this affidavit with the same force and effect as if fully set forth herein.

(Signed)

A. H. GROUT.

Subscribed and sworn before me this 30th day of November, 1914.

[SEAL.] (Signed)

R. B. McCLINTON,

*Notary Public in and for the State of Washington,*

*Residing at Seattle.*

81 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 49.

R. B. WISEMAN and C. A. CEDAR, Copartners in Business under the Firm-name and Style of Wiseman & Cedar; W. C. McNichol and John Rae, Copartners in Business under the Firm-name and Style of W. C. McNichol & Rae; Fred Lilyman and C. E. Renard, Copartners in Business under the Firm-name and Style of Lilyman & Renard; P. J. Hanley and F. W. Hopkins, Copartners in Business under the Firm-name and Style of Hanley Employment Agency; George W. Crane, W. H. Uplinger, James Engleson and Claude B. Luther, Copartners in Business under the Firm-name and Style of Black Cat Employment Company; H. S. Clarke; John W. Crawford and James R. Crawford, Copartners in Business under the Firm-name and Style of Crawford Brothers; J. J. Wilms and A. K. Adelberg, Copartners in Business under the Firm-name and Style of Wilms Labor Agency; M. A. Bettis; H. L. Keys; George W. Thorne and S. S. Barash, Copartners in Business under the Firm-name and Style of Seattle Hotel News; Mabel Campbell and W. C. Moore, Copartners in Business under the Firm-name and Style of Campbell & Moore; H. A. Pratt; W. Vernon Underwood and W. A. Miller, Copartners in Business under the Firm-name and Style of Northern Pacific Employment Agency, and S. H. Garvin, Plaintiffs,

vs.

W. V. TAXNER, Attorney General of the State of Washington, and John F. Murphy, as Prosecuting Attorney of King County, State of Washington, Defendants.

(EXHIBIT "D.")

*Controverting Affidavit of D. P. Kenyon in Behalf of Defendants Herein Against the Granting of a Temporary Restraining Order or Injunction.*

STATE OF WASHINGTON,  
County of King, ss:

D. P. Kenyon, of lawful age, being first duly sworn, on his oath deposes and says:

That for over six and one-half ( $6\frac{1}{2}$ ) years last past, he has been and now is, Examiner in the office of the Labor Commissioner of the city of Seattle, in said county and state, and that for over two and one-half ( $2\frac{1}{2}$ ) years last past, he has been and still is  
82 sole Labor Adjuster in said office of the Labor Commissioner and as such has exercised, and still has, the exclusive charge, power and control over all the matters relating to the investigation and adjustment of all complaints coming into said department re

lating to the employment of labor, among others, through the employment agencies named as plaintiffs in the above entitled cause.

That over three-fourths of the entire time of this affiant has been consumed in the handling of such matters and in the discharge of such duties, and much time of other employes of the city in said department has thus been consumed.

That the performance of his duties generally involves an inquiry into the complaints lodged in said department by employes, which generally necessitates a thorough investigation into the facts as disclosed by such employes, the employment agencies or the employers of such labor, and if possible, to amicably settle and adjust such complaints without the aid of the courts.

That during all of said time, several hundred of such complaints have been made to said department, either directly to myself or to other employes of the city of Seattle therein, and they have personally been investigated, settled or adjusted by myself, and that many of such complaints have been made against some of the above named plaintiffs and that some complaints have been made against each and every one of said plaintiffs.

That at least seventy-five per cent. (75%) of all said complaints so made against said plaintiffs, and each of them, were meritorious from the standpoint of the employes, prospective and actual, who made them, and that at least seventy five per cent. (75%) of all complaints made to said department during all of said time, have been meritorious from the standpoint of such employes, prospective and actual, and that the wrongs and injustices incident and growing out of said seventy-five per cent. (75%) of such complaints were

83 directly perpetrated and caused by said plaintiffs and other employment agencies operating in the city of Seattle.

That several of said plaintiffs above named and other employment agencies operating in the city of Seattle have during said times generally resorted to many forms of deception, artifices, false representations and fraud, to, and in dealing with, such employes, for the purpose of extracting and extorting money or fees from such employes and applicants for work.

Such false representations, wrongs and injustices consist, among other things, in statements to such employes as to the amount of wages they will get, the sanitary and other conditions in and about the camps at the places of work, the number of hours they will be required to labor each day, the price and character of board and lodging furnished by the employers, the relative distances in miles to the various places of work and the cost and character of such transportation and other matters.

That upon a full investigation of hundreds of complaints by me during the times herein mentioned, I have discovered that the above named plaintiffs and other employment agencies in said city have made such false representations and deceptive and misleading statements as to each and all of the foregoing matters.

That in many of the complaints lodged with said department and investigated by me, I found that a great deal of deception and fraud have been perpetrated by the plaintiffs and certain other em-

ployment agencies in the city by failing or neglecting to tell the whole truth about any or all of the foregoing conditions and in purposely, or otherwise, concealing many facts and things relative to such conditions, which, in fairness and justice, should have been clearly stated to the employes or applicants for work, and that the knowledge of many of the facts and conditions thus concealed was necessary to the applicants or prospective employes in order to determine whether or not they desired the particular jobs or work in question.

That upon the discovery by such employes or applicants  
84 for work of such misleading, deceptive, fraudulent and false representations or the knowledge of the actual facts and conditions concealed by the employment agencies as aforesaid, such applicants had, in hundreds of cases during said time, returned to the city of Seattle and made their complaints to said plaintiffs and other employment agencies in the city by whom they were sent, and, as a general rule, by one device or another, said employment agents have put them off from time to time and delayed the matter and, among other things, have stated that they would correspond with the employer and for them to call in a few days thereafter and, as a general rule in all of such cases, such employment agencies have either refused or neglected to adjust or settle any such differences or complaints, and that thereupon such applicants lodged their complaints in said city department or with your affiant personally.

That the relationship between said department and your affiant and said plaintiffs and other employment agencies in the attempt to settle and adjust such complaints have generally proved, during all of said time, unsatisfactory in the extreme.

That although said employment agencies are required under the law and city ordinances of said city to secure a license and furnish a bond in which they obligate themselves and agree to carry out, in a bona fide spirit, all the terms and provisions of said laws, yet their attitude has generally been one of hostility, insolence and unwillingness and obstruction to the reasonable, or any, enforcement of such laws, and that all the amicable adjustments or settlements which have been made between said plaintiffs and other employment agents in the city and said department or your affiant have generally been made in the face of such attitude and conduct on their part.

That said department or your affiant has been unable to adjust several of the complaints made by said applicants and that several cases against some of the plaintiffs herein and other employment  
agencies in the city have been conducted in the courts.

85 That in several of said cases, the real defense and conduct of such employment agencies has been one of delaying the proceedings in the courts as long as possible for the express reason and in the belief that such delay will cause the case to be dropped because of the necessary absence of such applicants and other witnesses.

That such applicants and witnesses are usually laboringmen who are poor and without means, and by reason of such wilful delay in

the proceedings, are required to work either in the city or elsewhere outside of the city.

That the actual experience, study and observation of your affiant clearly show that the natural, usual and inevitable tendency of the employment agency system as conducted in the State of Washington leads to a shortening of the length of employment.

That the said system is based solely on the desire on the part of the employment agents to secure fees and all the money they can, and by reason of such desire and conditions, the shorter the time of employment the greater the number of jobs.

That such desire for profit, under said system, naturally leads to collusion between the employment agencies and the foremen, superintendents or other agents of the employers, under and by virtue of which such employes are worked shorter periods of time and then discharged by such foreman, superintendent or other agent, and hereupon seek further employment in the same or other fields through the same or other employment agencies.

That generally the applicants or such employes who are seeking work are poor and without money or other means and are unable to bear the burden of paying fees demanded and extracted or extorted from them by such agencies.

That all my said experience, observation and study show such conditions obtain and substantially are of the same character and extent throughout the entire State of Washington.

That the nature of said business and system of employment  
86 agencies is of such character that efficient regulation thereof is practically impossible and that the evils and mischiefs and the conditions set forth are practically uncontrollable under regulation.

That the employment agencies in reality and in fact are primarily agents for and of the employers, and, as a rule, the employers are amply able to pay the fees or money to the employment agencies for securing the services of employes for them, and that in justice and on any sound theory, such employers should pay to such employment agents the fees or money for securing such employes for them.

Referring to the affidavit of the plaintiffs herein, and particularly that portion on pages 4 and 5 thereof wherein they state that in order to do business they must conduct it honestly, your affiant denies the same and each and every part thereof, and states that in the State of Washington the army of prospective employes who seek jobs of the plaintiffs herein and other employment agencies is composed largely of wage earners who go from place to place and have no permanent place of abode and are largely of a migratory character, and that the applicant who seeks a job today may in two months be hundreds of miles from the city.

Further answering that portion of said affidavit found on page 5 as to extortion and overcharging, your affiant denies the same and each and every part thereof, and states that some of the plaintiffs herein and other employment agencies in the city have been guilty



of charging more than a reasonable fee in violation and defiance of the city ordinances and law.

Further answering that portion on page 5 relative to the character of the business, your affiant denies each and every allegation therein contained and alleges that the business of said plaintiffs and other employment agencies is not beneficial and is harmful and results in all of the evils and mischiefs hereinabove referred to and tends to inefficiency of the employes and to unemployment.

That all of the mischiefs, evils and tendencies, charges of fraud, false representation and other things set forth herein have been practiced by some of the plaintiffs in the above entitled cause.  
(Signed) D. P. KENYON.

Subscribed and sworn to before me this 30th day of November, 1914.

(Signed) R. B. McCLINTON,  
[SEAL.] *Notary Public in and for the State of Washington, Residing at Seattle.*

Endorsements: Stipulation as to Controverting Affidavits, and Affidavits. Filed in the U. S. District Court for the Eastern District of Washington, December 16, 1914. W. H. Hare, Clerk.

88 In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2064.

JOE ADAMS, ALBERT M. MACHO, W. MATHEWSON, LUCILE C. Greever; J. W. Buhler and J. C. Mottaz, Copartners Doing Business under the Firm-name and Style of Home Employment Agency; J. T. Pierce and J. D. Beattie, Copartners Doing Business under the Firm-name and Style of National Employment Agency; Herman Rae and F. L. Buell, Copartners Doing Business under the Firm-name and Style of the Scandinavian-American Employment Agency; W. J. Lawrence, W. A. Miller; J. S. Ross and J. W. Rogers, Copartners Doing Business under the Firm-name and Style of Rogers & Ross; Effie C. Travers; Charles Lewis and Augustus Anderson, Copartners Doing Business under the Firm-name and Style of Lewis & Anderson Labor Agency; F. E. Featherstone and J. L. Featherstone, Copartners Doing Business under the Firm-name and Style of Featherstone Labor Agency, and H. C. Willis, Plaintiffs,

vs.

W. V. TANNER, Attorney General of the State of Washington, and George H. Crandall, Prosecuting Attorney of Spokane County, State of Washington, Defendants.

*Motion to Dismiss.*

Comes now W. V. Tanner, as attorney general of the state of Washington, one of the defendants above named, and appearing

separately and for none other of the defendants herein, moves to dismiss the bill of complaint filed herein, for the reasons and upon the grounds that, as appears upon the face thereof,

## I.

Said bill of complaint does not state facts sufficient to warrant this court in granting any relief to the plaintiffs;

## II.

That plaintiffs have a plain, speedy and adequate remedy at law;

## III.

That this court has no jurisdiction over the persons of these defendants or either of them, or of the subject-matter of this action.

(Signed)

W. V. TANNER,  
*Solicitor for said Defendant.*

Endorsements: Motion to Dismiss. Filed in the U. S. District Court for the Eastern District of Washington, December 31, 1914. W. H. Hare, Clerk, by S. M. Russell, Deputy.

In the District Court of the United States for the Eastern District of Washington, Northern Division

No. 2064.

JOE ADAMS, ALBERT M. MACHO, W. MATHEWSON, LUCILE C. Greever; J. W. Buhler and J. C. Mottaz, Copartners Doing Business under the Firm-name and Style of Home Employment Agency; J. T. Pierce and J. D. Beattie, Copartners Doing Business under the Firm-name and Style of National Employment Agency; Herman Rae and F. L. Buell, Copartners Doing Business under the Firm-name and Style of the Scandinavian-American Employment Agency; W. J. Lawrence, W. A. Miller; J. S. Ross and J. W. Rogers, Copartners Doing Business under the Firm-name and Style of Rogers & Ross; Effie C. Travers; Charles Lewis and Augustus Anderson, Copartners Doing Business under the Firm-name and Style of Lewis & Anderson Labor Agency; F. E. Featherstone and J. L. Featherstone, Copartners Doing Business under the Firm-name and Style of Featherstone Labor Agency, and H. C. Willis, Plaintiffs,

vs.

W. V. TANNER, Attorney General of the State of Washington, and George H. Crandall, Prosecuting Attorney of Spokane County, State of Washington, Defendants.

*Motion to Dismiss.*

Comes now George H. Crandall, as prosecuting attorney of Spokane County, State of Washington, one of the defendants above

named, and appearing separately and for none other of the defendants herein, moves to dismiss the bill of complaint filed herein, for the reasons and upon the grounds that, as appears upon the face thereof,

### I.

Said bill of complaint does not state facts sufficient to warrant this court in granting any relief to the plaintiffs;

### II.

That plaintiffs have a plain, speedy and adequate remedy at law;

### III.

91 That this court has no jurisdiction over the persons of these defendants or either of them, or of the subject matter of this action.

(Signed)

GEORGE H. CRANDALL,

*As Prosecuting Attorney of Spokane County,  
State of Washington.*

Endorsements: Motion to Dismiss. Filed in the U. S. District Court for the Eastern District of Washington, December 31, 1914. W. H. Hare, Clerk, by S. M. Russell, Deputy.

92 In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2064.

JOE ADAMS et al., Plaintiffs,

vs.

W. V. TANNER, Attorney General of the State of Washington, and  
GEORGE H. CRANDALL, Prosecuting Attorney of Spokane County,  
State of Washington, Defendants.

### *Order to File Opinions.*

The above entitled cause having been heard in the Western District of Washington upon motion of the complainants above named for a temporary injunction, and upon motion of the defendants above named to dismiss, and said hearing having been in conjunction with cause No. 49 pending in the United States District Court for the Western District of Washington, Northern Division, entitled "R. B. Wiseman et al., Complainants, v. W. V. Tanner as Attorney General of the State of Washington, et al., Defendants," and a majority and minority opinion having been filed in said cause No. 49 pending in the United States District Court for the Western District of Washington, but by inadvertence and oversight said majority

and minority opinions not having been filed in the above entitled motion.

It is ordered that the clerk of the above entitled court be, and he hereby is, ordered and directed to file in the above entitled cause a copy of the majority and minority opinions of the court filed in said cause pending in the United States District Court for the Western District of Washington, Northern Division, cause No. 49 therein, entitled, "R. B. Wiseman et al., Complainants, v. W. V. Tanner as Attorney General of the State of Washington, et al., Defendants," and that said majority and minority opinions stand as the opinions of the court in this the above entitled cause.

Dated at Seattle, Washington, the 3d day of September, 1915.

(Signed)

JEREMIAH NETERER, *Judge*.

Endorsement: Order. Filed in the U. S. District Court for the Eastern District of Washington, September 9, 1915. W. H. Hare, Clerk, by S. M. Russell, Deputy.

4 In the District Court of the United States for the Western District of Washington, Northern Division.

#### No. 49.

R. B. WISEMAN et al., Plaintiffs,

vs.

W. V. TANNER, Attorney General of the State of Washington, and JOHN F. MURPHY, Prosecuting Attorney of Kings County, State of Washington, Defendants; City of Seattle, Intervener.

Brightman, Halverstadt & Tennant, for Complainants.

W. V. Tanner, Attorney General and C. J. France, for State. John F. Murphy, Prosecuting Attorney, and Robert H. Evans, for King County.

James E. Bradford, Corporation Counsel, and Ralph S. Pierce, Assistant Corporation Counsel, for City of Seattle.

Before Gilbert, Circuit Judge, and Cushman and Neterer, District Judges.

*Opinion on Motion for Temporary Injunction: Motion Denied.*

NETERER, *District Judge*:

A Bill in Equity is filed by complainants, praying an injunction against the enforcement of the provisions of Initiative Measure No. 8, adopted by the majority of the electors of the State of Washington, voting for and against the measure, at the general election held on November 3, 1914. After alleging jurisdictional facts, it is charged that said act violates the provisions of Section 1 of the Fourteenth

Amendment to the Constitution of the United States, in that it deprives these plaintiffs, and each of them, of their liberty and property without due process of law, and denies to them the equal protection of the law; that it is in violation of Section 10 of Article I of the Federal Constitution; that it is in violation of Sections 3 and 12 of

Article I of the Constitution of the State of Washington.

95      Affidavit of plaintiffs is filed in support of the motion for temporary injunction, verifying the allegations of the complaint, and in which it is alleged that the plaintiffs have always been frank and honest with all persons dealing with them in seeking employment; that charges have been reasonable; that they have generally returned to applicants for employment any fees paid if the labor was not satisfactory; that the charges for securing employment run from seventy-five cents to nine dollars, each depending upon the position which is provided; that the value of the business is from \$3000.00 to \$5000.000; and that the enforcement of the act would destroy the business, and an interruption would occasion irreparable loss.

The defendants have filed a motion to dismiss, upon the ground that said bill of complaint does not state facts sufficient to warrant this court in granting any relief to the plaintiffs; that plaintiffs have a plain, speedy and adequate remedy at law; and that this court has no jurisdiction over the persons of the defendants, or either of them, upon the subject-matter of this action, and have filed controverting affidavit of E. P. Marsh, President of the State Federation of Labor, an organization embracing every organized trade of the state except the Railroad Brotherhoods, and for five years manager of the Everett Labor Temple, "a place where men, organized and unorganized alike, drifted to constantly with reports of industrial hardships imposed upon them," who states that he has

"been in contact with laboring men of all classes, skilled and unskilled; during the past two years I have been constantly traveling about the state of Washington, visiting every industrial center and many of the smaller towns \* \* \*."

"It is often hard to get evidence of actual fraud against these agencies that will stand court test. This is in part due to reluctance and inability of victims of employment agents to appear in court. Again, it is also due to the pseudo-fraudulent character of representations made by the agencies \* \* \*"

"That I have visited scarcely a section of this state that I have not heard stories of alleged collusion between private employment agencies and foremen, superintendents, or other agents or employers, the system being apparently to keep men employed for a brief  
96      period of time, discharging them to make room for others, the obvious deduction being that the fee was divided between such agencies and such foremen of employers, and that 'the more men employed the bigger the split.'",

and corroborates the contravening affidavit made by D. P. Kenyon, an examiner in the office of the Labor Commission of the City of Seattle, and sole labor adjuster in the office of said Labor Commis-

sion, who swears that seventy-five per cent. of all labor complaints have been meritorious from the labor standpoint, and arise out of the wrongs perpetrated by plaintiffs and other agencies; that

"the actual experience, study and observation of your affiant clearly show that the natural, usual and inevitable tendency of the employment agency system as conducted in the State of Washington leads to a shortening of the length of employment; that the said system is based solely on the desire on the part of the employment agents to secure fees and all the money they can, and by reason of such desire and conditions, the shorter the time of employment the greater the number of jobs \* \* \*

"That generally the applicants or such employes who are seeking work are poor and without money or other means and are unable to bear the burden of paying the fee demanded and extracted or extorted from them by such agencies. That all of my said experience, observation and study show such conditions obtain and substantially are of the same character and extent throughout the entire state of Washington."

and charges collusion between agencies and managers of employers which results in shorter time of employment to increase the number of "jobs."

Mr. A. H. Grout, Secretary of the Municipal Civil Service Commission and ex-officio Labor Commissioner, corroborates the affidavit of D. P. Kenyon, and further says:

"I also reached the conclusion prior to the adoption of said initiative measure that the only efficient method of regulating the private employment agencies of said state was to prohibit the charging by said agencies of fees to persons seeking employment, and after consultation with other persons engaged in similar official positions to that which I hold, I find that it is the general opinion that the prohibition of the taking of fees from those seeking employment is the only efficient manner of regulating said private employment agencies and the curing and preventing of the many abuses which arise in the conducting of said business as heretofore practiced."

James E. Bradford, now and for three years Corporation Counsel of the City of Seattle, in addition to other matters, states that he has been frequently called upon by the Labor Commission of Seattle and

the Labor Department to aid in the adjustment of settlements  
97 of complaints or claims lodged in the said Labor Commission  
by employes against employment agents in said city, and  
says:

"I have read and know the contents of the controverting affidavit of Mr. D. P. Kenyon, and personally know that a great deal of time of said Legal Department during all of said period has been consumed in aiding the said Labor Department in the adjustment and settlement of such complaints, and that very much time and attention has been given by said Labor Department in the adjustment and settlement of such claims."

"That during said times said employment agencies have, among others, resorted to various forms of artifices, false representations and

fraud to, and in dealing with employes, for the purpose of extracting and extorting money and fees from such applicants; that such false representations, wrongs and injustice consist, among other things, in statements to such applicants as to the amount of wages they will secure, the sanitary and other conditions in and about the camps at the places of work, the number of hours they will be required to labor each day, the price and character of board and lodging furnished by the employers, the relative distances and miles to the various places of work, and the cost and nature of such transportation, and other similar matters."

Complainants have filed a reply affidavit, setting out:

"An ordinance to license and regulate certain trades and occupations in the City of Seattle, and providing penalties for the violation thereof."

in which ordinance the City of Seattle seeks to regulate employment agencies, and complainants allege compliance with the provisions of the ordinance, and further state:

"That heretofore, on or about the 17th day of November, 1914, in the City of Seattle, the said Kenyon attended a meeting of some of the plaintiffs above named, among whom were Crane, Rafter, Moore, Wiseman, Lilyman, and B. W. Sawyer, at which time the said Halverstadt asked Kenyon if he had any trouble whatever with any of the employment agents which Halverstadt represented, and Kenyon replied he had no trouble with them whatsoever, and that it was not necessary for anybody to look after them; that there were only three or four agencies in the city which had ever made him any trouble."

The Act in issue reads:

"An Act to prohibit the collection of fees for the securing of employment or furnishing information leading thereto and fixing a penalty for violation thereof.

"Be it enacted by the people of the State of Washington:

"Section 1. The welfare of the State of Washington depends on the welfare of its workers and demands that they be protected from conditions that result in their being liable to imposition and extortion.

"The State of Washington therefore exercising herein  
98 police and sovereign power, declares that the system of collecting fees from the workers for furnishing them with employment or with information leading thereto, results frequently in their becoming the victims of imposition and extortion and is therefore detrimental to the welfare of the State.

"Section 2. It shall be unlawful for any employment agent, his representative, or any other person to demand or receive, either directly or indirectly, from any person seeking employment, or from any person in his or her behalf, any remuneration or fee whatsoever for furnishing him or her with employment or with information leading thereco.



"Section 3. For each and every violation of any of the provisions of this act the penalty shall be a fine of not more than one hundred dollars and imprisonment for not more than thirty days."

The motion to dismiss for want of jurisdiction will be denied. The case will be treated as falling within the exception to the general rule that equity will not enjoin criminal proceedings, the exception being where property rights will be destroyed by criminal proceedings under an invalid law or unconstitutional act.

It would be useless to set out in this opinion the sections referred to of the Constitution of the United States or of the Constitution of the State of Washington.

A consideration of the act with relation to the welfare clause and property and contract provision of the Constitution will suffice, and reference to the contents of affidavits in support of the respective contentions is made in view of the statement in the act that "the welfare of the State \* \* \* depends on the welfare of its workers, and \* \* \* that they be protected from \* \* \* imposition and extortion," for the purpose of showing that there was some agitation with relation to the issue tendered by the act.

Welfare, as defined by Webster, is—

"Well-doing or well-being, in any respect; the enjoyment of health and common blessings of life; exemption from any evil or calamity; prosperity; happiness."

"The good and welfare of this commonwealth, for which reasonable orders, laws, statutes and ordinances may be made, by force of which private rights of property may be affected, is a much broader and less specific ground of exercise of power than public use and public service. The former expressed the ultimate purpose or result sought to be obtained by all forms of legislative power over property; the latter implies a direct relation between the primary object of appropriation and the public enjoyment." (*Lowell v. City of Boston*, 111 Mass. 454, 15 Amer. Rep. 39.)

99 The State, under its police power, can adopt any act which reasonably protects its citizens or class of citizens, from fraud and extortion.

"Police power," in its broadest acceptance, means

"the general power of the government to preserve and promote the public welfare, even at the expense of private rights." (*City of Geneva vs. Geneva Telephone Co.*, 62 N. Y. Supl. 172, 173; *Karasek v. Peier*, 22 Wash., 419.)

"We hold that the police power of the state embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals or the public safety." (*Harlan, J.*, in *C. B. & Q. Ry. Co. v. Ill.*, 200 U. S. 341.)

"The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community \* \* \* For the pursuit of any lawful trade or business the law imposes similar conditions. Regulations

respecting them are almost infinite, varying with the nature of the business." (Field, J., in *Crowley v. Christianson*, 137 U. S., 86.)

"The power of the state, sometimes termed its police power, to prescribe regulations promoting the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the state, develop its resources and add to its welfare and prosperity." (Field, J., in *Barbier v. Connelly*, 113 U. S. 31; Fuller, J., in *re Kemmler*, 136 U. S. 436.)

"The police power is not subject to any definite limitations, but is co-extensive with the necessities of the case and the safeguard of the public interests." (Brown, J., in *Camfield v. U. S.*, 167 U. S. 518.)

"What is termed the 'police power' has been the subject of a good deal of consideration by both the federal and state courts, and all agree that it is a difficult matter to define the limits within which it is to be exercised. Every well organized government has the inherent right to protect the health and provide for the safety and welfare of its people. It has not only the right, but it is a duty and obligation which the sovereign power owes to the public; and, as no one can foresee the emergency or necessity which may call for the exercise of this power, it is not an easy matter to prescribe the precise limits within which it may be exercised. It may be said to rest upon the maximum, '*Salus populi suprema lex.*' " (Deems v. City of Baltimore, 30 Atl. 648, 650; 80 Md., 164.)

"'Police power' is defined by Blackstone, to be the regulation and domestic order of the kingdom whereby the inhabitants of a state like members of a well-governed family, are bound to conform their general behavior to the rules of propriety, good neighborhood, and good manners, and to be decent, industrious and inoffensive in their respective stations. It is said that by general police power of the state persons and property are subjected to the general comfort, health and prosperity of the state." (In *re Marriage License Docket*

4 P. Dist. Ct, 162.)

100 "Police power is the power of the state to prescribe regulations to promote the \* \* \* good order of the people and to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity." (Bell's Gap R. Co. v. Commonwealth of Pa., 134 U. S., 232; *Mugler v. Kansas*, 123 U. S. 633.)

"The power which the legislature has to promote the general welfare is very great, and the discretion which that department of government has in the employment of means is very large." (Powell v. Pa., 127 U. S., 678.)

The power which local authorities have to promote the general welfare of the state, when applied to the instant case, where the act in issue was adopted by each elector of the state, recording his conclusion, and a majority thinking that an evil existed which should be regulated in the manner indicated by the act, would seem to be conclusive when taken in connection with the language of Justice Day, in *Missouri Pacific Railway Co. v. City of Omaha*, filed November 30, 1914, in which he says:

"The local authorities are presumed to have knowledge of local conditions, and to have been induced by competent reason to take the action which they did."

This was an action to restrain the enforcement of an ordinance passed March 29, 1910, by the defendant city, in which the Railway Company was ordered to erect, construct and complete the viaduct and approaches on Dodge Street, of the width, height, strength and of the material and manner of construction required by the City Engineer of Omaha, and according to the plans and specifications prepared by him. The ordinance was attacked upon the ground that defendant's rights guaranteed by the Constitution of the United States and the Constitution of the State of Nebraska were infringed, and the court declined to interfere.

The Supreme Court, in *Otis et al. v. Parker*, 187 U. S., 607, says:

"If the state thinks an admitted evil cannot be prevented except by prohibiting a calling or transaction not in itself necessarily objectionable, the courts cannot interfere, unless, in looking at the substance of the matter, they can see that it is a clear, unmistakable infringement of the rights secured by the fundamental law."

That an admitted evil exists is not only set forth in the 101 act, but by the affidavits of the several parties to this proceeding, in which the condition is shown to exist, and against which the municipalities have legislated.

Justice Day, in *Schmidinger v. Chicago*, 226 U. S., 578, says:

"This court has had frequent occasion to declare that there is no absolute freedom of contract. The exercise of police power fixing weights and measures and standard sizes must necessarily limit the freedom of contract which would otherwise exist. Such limitations are constantly imposed upon the right to contract freely, because of restrictions upon that right deemed necessary in the interest of the general welfare."

This expression was brought forth upon the charge that the Fourteenth Amendment to the National Constitution was violated by the municipality of Chicago, in regulating the size of loaves of bread manufactured and sold within the city. The court held that the right of the municipality to regulate one trade and not another is well settled as not denying the equal protection of the laws, and that such regulation is not contrary to the due process clause and does not interfere with the liberty of contract.

Justice Hughes, for the court, in *C. B. & Q. R. R. Co. v. McGuire*, 219 U. S., 459, in considering an act of the legislature of Iowa, making railway corporations liable in damages for injuries sustained by any person, including employees, in consequence of the neglect, mismanagement, or wilful wrongs of the employees or agents of such corporations, in which it was held that the act did not interfere with the liberty to make contracts or deny the equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States, said:

"There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not withdraw from

legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community."

and,

"It is subject, also, in the field of state action to the essential authority of government to maintain peace and security, and  
102 to enact laws for the promotion of the health, safety, morals and welfare of those subject to its jurisdiction."

In *Noble State Bank v. Haskell*, 219 U. S., 104, Justice Holmes, for the court, said:

"It may be said in a general way that the police power extends to all the great public needs. \* \* \* It may be put forth in aid of what is sanctioned by usage, or held by prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare."

That the act in issue was adopted by popular vote of the state, emphasizes immediate necessity therefor to the public welfare.

In *Halter v. Nebraska*, 205 U. S. 35, Justice Harlan, for the court, said:

"Another vital principle is that, except as restrained by its own fundamental law, or by the Supreme law of the land, a state possesses all legislative power consistent with a republican form of government. Therefore each state, when not thus restrained, and so far as this court is concerned, may, by legislation provide \* \* \* for the common good as involved in the well-being, peace, happiness and prosperity of the people."

In *Knoxville Iron Co. v. Harrison*, 183 U. S. 13, in a decision involving an act of the State of Tennessee requiring the redemption in cash of store orders or other evidences of indebtedness issued by employers in payment of wages due to employees, Mr. Justice Shiras, for the court, said:

"Furthermore, the passage of the act was a legitimate exercise of police power, and upon that ground also the legislation is well sustained. The first right of a state, as of a man, is self-protection, and with the state that right involves the universally acknowledged power and duty to enact and enforce all such laws not in plain conflict with some provision of the state or Federal Constitution as may rightly be deemed necessary or expedient for the safety, health, morals, comfort and welfare of its people."

In *Murphy v. California*, 225 U. S. 623, in passing upon the constitutionality of an ordinance passed by the City of Pasadena, Justice Lamar said:

"The Fourteenth Amendment protects the citizen in his right to engaged in any lawful business, but it does not prevent legislation intended to regulate useful occupations, which, because of their nature or location, may prove injurious \* \* \* to the public."

From the record, it is apparent that the business, good order and welfare of the state is involved, and the electors having ex-

103 expressly stated in the act that the welfare of the state demands the adoption of the provisions of the act seeking to regulate the agencies named, the courts cannot examine into local conditions.

"All property in this commonwealth is \* \* \* subject to those general regulations which are necessary to the common good and general welfare. Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonable restraints and regulations, established by law, as the legislature, under the governing and controlling power vested in them by the Constitution, may think necessary and expedient." (Chief Justice Shaw, 62 Pac. 571 (Cal.).)

In many ways and phases has the issue here been before the Supreme Court of the United States, and in all of the cases has the exercise of legislative discretion been held not to be subject to judicial review in the absence of arbitrary restraint.

Gundling v. Chicago, 177 U. S., 183;

Petit v. Minn., 177 U. S., 164;

Austin v. Tenn., 179 U. S., 343;

Booth v. Illinois, 187 U. S. 425;

Jacobson v. Mass., 197 U. S., 11;

Patterson v. Bark Eudora, 190 U. S., 169.

In *Powell v. Penn.*, 127 U. S. 678, the Supreme Court held constitutional an act of the Pennsylvania legislature prohibiting the manufacture or sale of oleomargarine or adulterated substitutes for butter or cheese. Justice Harlan, for the court, while assenting to the general proposition advanced by the defendant that his enjoyment upon terms of equality with all others in similar circumstances of the privilege of pursuing an ordinary calling or trade, is an essential part of his rights of liberty and property as guaranteed by the Fourteenth Amendment, says:

"But it cannot adjudge that the defendant's right of liberty and property, as thus defined, have been infringed by the statute of Pennsylvania, without holding that, although it may have been enacted in good faith for the objects expressed in its title \* \* \* it has, in fact, no real or substantial relation to those objects \* \* \*. The court is unable to affirm that this legislation has no real or substantial relation to such objects."

And, again,

"Whether the manufacture of oleomargarine \* \* \* is, or may be, conducted in such a way, or with such skill and secrecy, as to baffle ordinary inspection, or whether it involves such danger to the public health as to require for the protection of the people the entire suppression of the business, rather than its regulation in such a manner as to permit the manufacture and sale of articles of that class that do not contain noxious ingredients, are questions of  
104 fact and of public policy which belong to the legislative department to determine. And as it does not appear upon the face of the statute, or from any facts of which the court must

take judicial cognizance that it infringes rights secured by the fundamental law, the legislative determination of those questions is conclusive upon the courts. \* \* \* The power which the legislature has to promote the general welfare is very great, and the discretion which that department of the government has, in the employment of means to that end, is very large."

The Supreme Court of the United States, in *Central Lumber Company v. South Dakota*, 226 U. S., 158, upheld the constitutionality of an act of the state legislature of South Dakota, making it a penal offense for any person, engaged in the production, manufacture, or distribution of any commodity in general use to discriminate as to price or rate between different sections or communities in the state. Mr. Justice Holmes, for the court, said:

"The Fourteenth Amendment does not prohibit legislation special in character, *Magoun v. Ill. Trust & Sav. Bank*, 170 U. S., 283, 294. It does not prohibit a state from carrying out a policy that cannot be pronounced purely arbitrary by taxation or penal laws \* \* \*. If a class is deemed to present a conspicuous example of what the legislature seeks to prevent, the Fourteenth Amendment allows it to be dealt with although otherwise and merely logically not distinguishable from others not embraced in the law."

And,

"If the legislature thought that that particular manifestation of ability usually came from great corporations whose power it deemed excessive, and for that reason did more harm than good in their state, and that there was no other case of frequent occurrence where the same could be said, we cannot review their economics or their facts."

In *McLean v. Arkansas*, 211 U. S., 539, the court had under consideration the constitutionality of a statute of Arkansas, requiring coal to be measured for the payments of miners' wages, before screening, in all mines in the state employing more than ten men underground. The court held the act not to be in violation of the equal protection and contract clauses of the Fourteenth Amendment, and through Justice Day stated, that while the Constitution provides for the protection of citizens in making contracts for the sale of labor, and protects the right to carry on trade or business against hostile state legislation, yet when the right to contract or carry on business conflicts with laws declaring the public policy of the state, enacted for the protection of the public \* \* \*

105 welfare, the same may be valid, notwithstanding they have the effect to curtail or limit the freedom of contract; and further, that since the law is alike applicable to all mines in the state employing more than ten men underground, it is in no sense an unjust or unreasonable discrimination, and hence does not deprive defendants of the equal protection of the laws within the meaning of the Constitution.

In *Holden v. Hardy*, 169 U. S. 366, the court held not in violation of the contract, due process or equal protection clauses of the Fourteenth Amendment, a statute of the State of Utah, limiting

the employment of workmen under ground to eight hours a day, Justice Brown, for the court, said:

"The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression, or spoliation of a particular class."

Justice Field, for the Court, in *Barbier v. Connelly*, 113 U. S., 31, stated in substance that while the Fourteenth Amendment was undoubtedly intended to protect citizens from arbitrary deprivation of life or liberty or arbitrary spoliation of property, and that equal protection should be given to all under like circumstances, yet that amendment—broad and comprehensive as it is—was not designed to interfere with the police power of the state to prescribe regulations to promote \* \* \* the good order of the people.

To the same effect is *Murphy v. California*, 225 U. S., 623; *Bacon v. Walker*, 204 U. S. 311.

It is clearly apparent that what the regulation shall be and how to be administered are matters for the state, and a strong preponderant opinion being prevalent among the electors of the state, they having expressed at a general election that the public welfare required regulation as set forth in the act, and having declared that the evil existed and shall be met by prohibiting the collection of fees from a class of persons, the court cannot interfere, unless it

106 appears that the act has no real or substantial relation to the evil sought to be remedied, which does not appear in this case. The court cannot say that the electors of the state, in adopting an act which declared that the welfare of the state required the prohibition of the collection of fees from the sources designated, did not exercise a reasonable discretion in declaring a public policy as in the act set forth.

The contention that the relief asked is in harmony with *Little v. Tanner*, 208 Federal 605 (this Circuit) is not well taken. The issue there involved the constitutionality of a trading stamp act of the State of Washington. The court, at page 609, said:

"It is plainly manifest that no merchant could afford to pay the sum of \$6000.00 annually for the mere privilege of giving away trading stamps or allowing discounts on cash sales, but if this were the only objection to the act, it may be that the court would be powerless to enjoin its execution."

And on page 611,

"But inasmuch as the Supreme Court of the State of Washington has declared that an act prohibiting the use of trading stamps is in violation of the constitution of that state, we accept its decision as final and conclusive here."

The license fee was held to be a tax in violation of the provisions of the Fourteenth Amendment.

The larger number of decisions cited by complainants do not militate against or take from the quotation of the cases herein referred to. The public welfare is the determining factor, and the expressed conclusion of the electors of the state is that the interest of



the public generally requires the regulation provided by the act, and this is conclusive upon the court.

The fact that complainants may have conducted their business honestly and in such a way that no complaint could be rightfully lodged against them would not prevent the state from adopting the measure if necessary to reach persons who have not so conducted their business, but, as stated before the bar, in such a way as to have three men for one job: one upon the job, one going to the job, and one coming from the job, and receiving compensation from  
107 all. The honest must suffer with the others in regulating the business of the general class.

The act is within the police power of the state and does not infringe complainants' rights.

The motion for temporary injunction is denied, and the motion to dismiss the bill for want of equity is granted.

WM. B. GILBERT,

*Circuit Judge.*

JEREMIAH NETERER,

*District Judge.*

Judge Cushman, dissenting, will file opinion later.

Endorsements: Opinion. Filed in the U. S. District Court for the Eastern District of Washington, September 9, 1915. W. H. Hare, Clerk, by S. M. Russell, Deputy.

108 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 49.

(Northern Division.)

R. B. WISEMAN et al., Complainants,

vs.

W. V. TANNER, Attorney General of the State of Washington, and John F. Murphy, Prosecuting Attorney of King County, State of Washington, Defendants; City of Seattle, Intervener.

No. 50.

(Northern Division.)

H. K. SUKUHARA and K. UYZMIMAMI, Complainants,

vs.

W. V. TANNER, Attorney General of the State of Washington, and John F. Murphy, Prosecuting Attorney of King County, State of Washington, Defendants.

No. 20-E.

(Southern Division.)

C. A. CEDAR and JOHN NEWSOME, Complainants,

vs.

W. V. TANNER, Attorney General of the State of Washington, and Lorenzo Dow, Prosecuting Attorney of Pierce County, State of Washington, Defendants.

No. 2064.

(Northern Division, Eastern District.)

JOE ADAMS, ALBERT M. MACHO, et al., Complainants,

vs.

W. V. TANNER, Attorney General of the State of Washington, and George H. Crandall, Prosecuting Attorney of Spokane County, State of Washington, Defendants.

*Dissenting Opinion on Motion for Temporary Injunction.*

109 Brightman, Halverstadt & Tennant; for Complainants, R. B. Wiseman et al., H. K. Sukuhara et al., C. A. Cedar et al.

Edward J. Cannon; for Complainants; Joe Adams et al.

W. V. Tanner, Attorney General, and C. J. France, Assistant Attorney General; for Defendant, State of Washington.

John F. Murphy, Prosecuting Attorney, and Robert H. Evans, Assistant Prosecuting Attorney, for defendant, King County.

James E. Bradford, Corporation Counsel, and Ralph S. Pierce, Assistant Corporation Counsel, for Intervener, City of Seattle.

Lorenzo Dow, Prosecuting Attorney, for Defendant, Pierce County.

George H. Crandall, Prosecuting Attorney, for Defendant, Spokane County.

Before Gilbert, Circuit Judge, and Cushman and Neterer, District Judges.

CUSHMAN, *District Judge* (dissenting):

I dissent from the opinion of the majority of the court in one important particular. While agreeing with them that this cause comes within the exception to the general rule forbidding the injunction of criminal proceedings, and agreeing that the Act attacked does not violate the Eleventh Amendment to the Constitution, and while agreeing further that the employment agency business may be regulated to any reasonable extent, I dissent from the conclusion that the act in question is an act to regulate, reasonably or otherwise, this business, as it clearly appears to be one destroying and prohibiting the business of such agencies, where neither public health, safety nor morals are concerned.

If such business includes in it no harmful element, but, when properly conducted, is, alone, beneficial, then, under the Constitution, neither legislature nor electorate can strike it down, or prohibit it. To do so violates the Fourteenth Amendment to the Constitution and deprives those in that business of their liberty and property without due process of law.

The majority opinion holds that the Act is one for the regulation, and not prohibition, of employment agencies. The preamble of the act provides:

110 "An Act to prohibit the collection of fees for the securing of employment or furnishing information leading thereto and fixing a penalty for violation thereof."

Section two provides:

"It shall be unlawful for any employment agent, his representative, or any other person to demand or receive either directly or indirectly from any person seeking employment, or from any person on his or her behalf, any remuneration or fee whatsoever for furnishing him or her with employment or with information leading thereto."

In the official publication of the Secretary of the State of Washington of the initiative acts voted on at the election November 3, 1914, with the arguments for and against, there appears the initiative in question. It is headed as follows:

An Act to be submitted to the legal voters of the State of Washington for their approval or rejection at the general election to be held on Tuesday, the third day of November, 1914, proposed by Initiative Petition No. 8, filed in the office of the Secretary of State, July 3, 1914, commonly known as 'Abolishing Employment Offices Measure'."

The business of employment agencies consists of remuneration or finding employment for those who seek it, or informing them where it can be found. To say that the taking away of any remuneration or fee for this service is regulation and not prohibition of the business is to lose sight of what business is. Take away the remuneration for conducting it, and there is no business there. It would become then only a benevolent agency.

Upon the argument, the only suggestion made that the act did not prohibit business, was that, under it, employers might still pay the employment agencies a fee for seeking employees and, thereby, the business continue. There are two essential fallacies in this argument.

The affidavits filed show that the only income of the complainants is derived from fees charged the laborers for whom they seek employment.

First, the business, as established and carried on, is one for the sale of labor, or to find a sale for labor, and not to buy it. Labor differs from other commodities in this: The laborer may, on opportunity, sell his own labor; but, necessarily, busied with his toil in a complex commercial system such as ours, his opportunity is poor compared with that of an experienced and established agency engaged in the business of finding opportunities for employment.

Whatever business is considered and analyzed, it is one of sale, before there can be a sale, there must be something to sell. Uniformly, a buyer buys for his needs, but a seller's business is to sell. Where buying is part of a business, it is merely a preparation for sale.

The second fatal weakness in this argument is that, if this act forbidding the taking of a fee from the employe is valid, another act may forbid the taking of one from the employer. Thus, by admitting the validity of this act, the power is conceded, not only to fell the trunk, but to destroy the root and branch. This is not regulation.

The only support—if it may be so termed—in the record, for the position that this act is one of regulation and not prohibition is found in the affidavits, and presumably prepared by the Attorney General, wherein the act is painstakingly referred to as one growing out of the need for regulation of this business.

The denial to a man of the right to sell his labor; the denial of the right to hire some one to sell his labor, and, as a necessary corollary, the right of the agent to sell his services for the securing of each employment, is prohibition of the business.

If you forbid an agent to take a fee for the house he rents or sells, you, necessarily, stop his business.

There has been no contention nor holding that there is aught save good in an employment agency honestly conducted. Upon consideration, it will be conceded that few callings could be more worthy than finding honest employment and, thereby, honest independence for a man who wants to work and who cannot find the opportunity. An agency not inherently harmful, which secures labor for the unemployed, is beneficial.

112 In *re Dickey* (144 Cal., 234; 66 L. R. A., 928), the Supreme Court of California held unconstitutional a statute limiting the charges which the owner of an employment agency might make for his services. In the course of the opinion, it is said:

"It appears, therefore, that the due exercise of the police power is limited to the preservation of the public health, safety, and morals, and that legislation which transcends these objects, whatever other justification it may claim for its existence, cannot be upheld as a legitimate police regulation. The business in which this defendant is engaged is not only innocent and innocuous, but is highly beneficial, as tending the more quickly to secure labor for the unemployed. There is nothing in the nature of the business, therefore, that in any way threatens or endangers the public health, safety or morals, nor, indeed, is the purpose of this statute to regulate in these regards or in any of them. The declared purpose and the plain effect of the above-quoted section is to limit the right of an employment agent in making contracts—a right free to those who follow other vocations—and arbitrarily to fix the compensation which he may receive for the services which he renders."

(At p. 929.)

The Supreme Court of the State of Washington, in *Spokane v. Macho* (51 Wash., 322), in holding the employment agency business legitimate and beneficial, said:

"It cannot be denied that the business of the employment agent is a legitimate business, as much so as is that of the banker, broker or merchant; and under the methods prevailing in the modern business world, it may be said to be a necessary adjunct in the prosecution of business enterprises."

In *Williams v. Fears* (170 U. S., 270), the court, in considering the employment agency business, said:

"The court (state court) called attention to the fact that while previous acts had required a license, this act provided for a specific tax on the occupation of emigrant agents in common with very many other occupations, the declared purpose of the levy being for the support of the government, and ruled that the question of whether the tax was so excessive as to amount to a prohibition on the transaction of that business, did not arise, and indeed, was not raised.

(As in *Little v. Tanner*, 208 Fed., 605.) \* \* \*

"But this act is a taxing act \* \* \*. The individual laborer is left free to come and go at pleasure, and to make such contracts as he chooses, while those whose business it is to induce persons to

enter into labor contracts and to change their vocation, though left free to contract are subjected to taxation in respect of their business as other citizens are. \* \* \*

"The general legislative purpose is plain, and the intention to prohibit this particular business cannot properly be imputed from the amount of the tax payable by those embarked in it, even if we were at liberty on this record to go into that subject.

"It would seem, moreover, that the business itself is of such nature and importance as to justify the exercise of the police power in its regulation. We are not dealing with single instances, but with a general business, and it is easy to see that if that business is not subject to a regulation, the citizen may be exposed to misfortunes from which he might otherwise be legitimately protected." (At pp. 273, 274 and 275.)

In the case of *State v. Moore* (N. C., 22 L. R. A., 472), the court held unconstitutional a law because of the excessive fee required by a statute of North Carolina from emigrant agents, who differ from employment agents only in that the emigrant agent employs persons to do work out of the state in which they are employed. The court held such business not inherently harmful to the public; that it could be regulated, but not prohibited by an exercise of the police power.

When the interest the state has in the welfare of its citizens is considered, together with the fact that, without their employment and afforded opportunity for production, it could not exist, and the danger to the state in large numbers of unemployed, it is clear that the employment agency business is affected with a public interest, and that, if the law may be considered as a reasonable regulation, it should be upheld, but it is clear that it is not a regulation of the business, but the prohibition of the business.

If it be considered as regulation, it cannot be held reasonable, because it goes beyond the necessities of the case. All that is contended for is that the system, as conducted, has been at fault; that there has been collusion between agencies and managers of employers and that employment agencies have resorted to various forms of artifices, false representations and fraud in dealing with employes, for the purpose of extorting money and fees from such applicants, making false statements to applicants as to the amount of wages they would secure and as to other particulars concerning the promised employment.

These defects and faults do not inhere in the business itself, but are the faults and wrongs of certain individuals engaged in that business. It is true, if you sink the ship, you rid yourself of the barnacles on the bottom, but it is not reasonably necessary.

However many agencies may exist for the finding of employment for men who want it, as long as there are unemployed, there is no reasonable excuse for the elimination of any business carried on for that purpose.

The right to contract is not only the essence of liberty, but is a property right. This is a lawful business, arbitrarily and without

reasonable cause, prohibited. If the business, as conducted, is wrong, the regulation or prohibition should go to such conduct and not to the business.

"It is novel legislation, indeed, that attempts to take away from all the people the right to conduct a given business because there are wrongdoers in it, from whose conduct the people suffer. \* \* \*

"Nor can the contention be tolerated that because there have been, in times past, dishonest persons engaged in the ticket brokerage business, with the result that frauds have been perpetrated on both travelers and transportation companies, therefore the legislature can deprive every citizen engaged therein of the 'liberty' to further conduct such business. Stringent rules undoubtedly may be enacted to punish those who are guilty of dishonest practices in the conduct of such a business, and the machinery of the law put in motion for its rigorous enforcements; but to cut up, root and branch, a business that may be honestly conducted, to the convenience of the public and the profit of the persons engaged in it, is beyond legislative power.

"If the law were otherwise, no trade, business or profession could escape destruction at the hands of the legislature if a situation should arise that would stimulate it to exercise its power, for in every field of endeavor can be found men that seek profit by fraudulent processes. Transportation tickets have been forged, it is said; so have notes, checks and bank bills. Railroad companies are no more bound to honor forged tickets than the alleged maker of a forged note is bound to pay it. An innocent person who suffers by parting with his money on a forged ticket has his remedy against the vendor just the same as has the bank that discounts a forged note. Such instances might be multiplied, but it would serve no good purpose, for it is well known that no business can be suggested through which innocent parties may not be occasionally victimized. But, because of that fact, honest men cannot be prevented from engaging in their chosen occupations." (*People v. Warden*, 157 N. Y., 116; 43 L. R. A., 268, 271.)

All of the cases referred to in the majority opinion are either cases in which the court has upheld laws regulating the conduct of a lawful business, or regulating or prohibiting a business

115      found to inherently have in itself essential elements of harm. None of the cases cited go as far as the present decision. While there may be language in certain of them that, taken in its broadest sense and divorced from consideration of the facts of the cause in which the language was used, might include the present holding, yet, when viewed in the light of the facts of the case in which it was used, in none of them does it do so.

In *Petit v. Minnesota* (177 U. S., 164), a law was upheld forbidding labor on the Sabbath, except works of charity and necessity, such decision being on the ground that the legislation was, not only in the interest of public morals, but of public health.

In *Gundling v. Chicago* (177 U. S., 183), an ordinance was upheld requiring licenses in order to sell cigarettes.

*Walden v. Hardy* (169 U. S., 366), upheld an act providing an



eight hour day in mines and smelters upon the ground that those employments were dangerous and unhealthy. This was a law of regulation.

*Barbier v. Connelly* (113 U. S., 27), upheld an ordinance forbidding the operation of laundries within certain city limits at night, on the ground that it tended to secure the public safety and lessen the danger from conflagration.

*C. B. & Q. Ry. v. Drainage Commissioners* (200 U. S., 561), did not involve the constitutionality of a state law. The holding was that, where a railroad bridge was necessarily destroyed in enlarging the drainage capacity of a stream for the betterment of public health, and other conditions, that the destruction of the bridge was not the taking of property in the constitutional sense; that it was an incidental injury, to the right of private property, and that it was only for the taking of property for a public purpose that compensation must first be made under the Constitution. Neither was the railroad taken nor its business prohibited.

*Otis v. Parker* (187 U. S., 606), upheld the validity of a provision in the Constitution of California that all contracts for the sale of shares of capital stock of corporations on margin should be void. This case, in reality, follows the case of *Booth v. Illinois* (184 U. S., 425), as is shown by the reasoning of the court in *Otis v. Parker*:

"We cannot say that there might be conditions of public delirium in which at least a temporary prohibition of sales on margins would be a salutary thing. Still less can we say that there might not be conditions in which it reasonably might be thought a salutary thing, even if we disagreed with the opinion. Of course, if a man can buy on margin he can launch into a much more extended venture than where he must pay the whole price at once. If he pays the whole price he gets the purchased article, whatever its worth may turn out to be. But if he buys stocks on margin he may put all his property into the venture, and being unable to keep his margins good if the stock market goes down, a slight fall leaves him penniless, with nothing to represent his outlay, except that he has had the chance of a bet. There is no doubt that purchases on margin may be and frequently are used as a means of gambling for a great gain or a loss of all one has. It is said that in California, when the Constitution was adopted, the whole people were buying mining stocks in this way with the result of infinite disaster." (At pp. 609 and 610.)

The court said in *Booth v. Illinois*:

"The argument then is, that the statute directly forbids the citizen from pursuing a calling which, in it itself, involves no element of immorality, and therefore by such prohibition it invades his liberty as guaranteed by the supreme law of the land. Does this conclusion follow from the premise stated? Is it true that the legislature is without power to forbid or suppress a particular kind of business, where such business properly and honestly conducted, may not, in itself, be immoral? We think not. A calling may not in itself be immoral and yet the tendency of what is generally or

ordinarily or often done in pursuing that calling may be toward that which is admittedly immoral or pernicious. If, looking at all the circumstances that attend, or which may ordinarily attend, the pursuit of a particular calling, the state thinks that certain admitted evils cannot be successfully reached unless that calling be actually prohibited, the courts cannot interfere, unless, looking through mere forms and at the substance of the matter, they can say that the statute enacted professedly to protect the public moral has no deal or substantial relation to that object, but is a clear, unmistakable infringement of rights secured by the fundamental law. (*Mugler v. Kansas*, 123 U. S., 623, 661; *Minnesota v. Barber*, 13 U. S., 313, 320; *Brimmer v. Rebman*, 138 U. S., 78; *Voight v. Wright*, 141 U. S., 62.)

"We cannot say from any facts judicially known to the court or from the evidence in this case, that the prohibition of options to sell grain at a future time has, in itself, no reasonable relation to the suppression of gambling grain contracts in respect of which the parties contemplate only a settlement on the basis of difference in the contract and market prices. Perhaps, the legislature thought that dealings in options to sell or buy at a future time, although not always or necessarily gambling, may have the effect to keep out of the market, while the options lasted, the property which  
117 is the subject of the options, and thus assist purchasers to establish, for a time, what are known as 'corners,' whereby the ordinary and regular sales or exchanges of such property, based upon existing prices, may be interfered with and persons who have in fact no grain, and do not care to handle any, enabled practically to control prices. Or, the legislature may have thought that options to sell or buy at a future time were, in their essence, mere speculations, in prices, and tended to foster a spirit of gambling. In all this the legislature of the state may have been mistaken. If so, the mistake was not such as to justify the conclusion that the statute was a mere cover to destroy a particular kind of business not inherently harmful or immoral. It must be assumed that the legislature was of the opinion that an effectual mode to suppress gambling grain contracts was to declare illegal all options to sell or buy at a future time. The court is unable to say that the means employed were not appropriate to the end sought to be attained and which it was competent for the state to accomplish." (At pp. 429 and 430.)

*Patterson v. Bark Eudora* (190 U. S., 169), upheld a Federal law prohibiting the payment of seaman's wages in advance. This was upheld under the Commerce clause of the Constitution, and was essentially a regulation and not prohibition of employment.

*Knoxville Iron Co. v. Harbison* (183 U. S., 13), upheld a law requiring, under certain conditions, redemption in cash by the employer of store orders given the employees. This was a regulation of the relation and dealings between employer and employee.

*Austin v. Tennessee* (179 U. S., 343), upheld a law forbidding the sale of cigarettes, on the ground that it was not unreasonable to suppose that such law was designed for the protection of public health.

*Halter v. Nebraska* (205 U. S., 34), upheld an act forbidding

the use of any representation of the National flag for advertising purposes. The flag is the Nation's and both the state and Nation are bound to protect and cherish it. It would not be unreasonable to conclude that anything that lessened regard for the Nation's emblem—as making an advertising medium of it—would have in it an element of danger to the public. Such a law would not prohibit a lawful and beneficial business, but rather, regulate the advertisement of the business.

Jacobson v. Massachusetts (197 U. S., 11), upheld a compulsory vaccination law. Such a law affects the public health and safety and the liberty of the individual is subject to needs to that end to be determined by the legislature.

Missouri, Kansas & Texas Ry. Co. v. May (194 U. S., 267), had to do with the equal protection clause and is not in point.

In Schmidinger v. City of Chicago (226 U. S., 578), where the constitutionality of an ordinance of the city of Chicago was upheld—which fixed the weights at which bread might be sold—the ordinance was one of regulation. In the course of the opinion, it is said:

"It has not fixed the price at which bread may be sold. It has only prescribed that the standard weight must be found in the loaves of the sizes authorized."

Such ordinance was one of pure regulation, as much so as the fixing of weights and measures has always been considered.

In Central Lumber Co. v. South Dakota (226 U. S., 157), a law was upheld prohibiting unfair discrimination in sales or prices in different localities, substantially under the same conditions. The legislature did not prohibit the business, but condemned certain conduct in it.

Rosenthal v. New York (226 U. S., 206), upheld a law requiring junk dealers to make diligent inquiry as to the legal right of sellers to certain kinds of property sold to them. The business was not forbidden.

Murphy v. California (225 U. S., 623), upheld an ordinance prohibiting the keeping of billiard halls on the ground that the keeping of a billiard hall had a harmful tendency in and of itself, independent of the manner of its conduct, and, therefore, could be legally prohibited.

Noble State Bank v. Haskell (219 U. S., 104), upheld an act subjecting state banks to assessments for a depositors' guaranty fund. This was regulation, but not prohibition, of a lawful business.

119 C. B. & Q. R. R. Co. v. McQuire (219 U. S., 549), upheld an act prohibiting contracts limiting liability for injuries, the contract being made in advance of the injury received. This act was limited to railroads, which are common carriers. The prohibition was that of a contract that had in itself the seeds of oppression. It was a regulation between employer and employee, and not a prohibition of employment. This law was upheld as one incidental to the protection of the public health. The court said:

"If the legislature may require the use of safety devices it may prohibit agreements to dispense with them. If it may restrict em-

ployment in mines and smelters to eight hours a day, it may make contracts for longer service unlawful. In such case the interference with the right to contract is incidental to the main object of the regulation, and if the power exists to accomplish the latter, the interference is justified as an aid to its exercise." (At p. 570.)

Kidd, Dater Co. v. Musselman Grocer Co., (217 U. S., 461) upheld a sales in bulk act requiring tradesmen making sales in bulk of their stock in trade to give notice to creditors. This was only a sale regulation, tending to prevent fraud. It did not deny the right of sale, but only prescribed the manner.

Welch v. Swasey (214 U. S., 91), upheld a statute regulating the height of buildings in commercial and residence portions of a city. This was a regulation in the interest of public safety.

McLean v. Arkansas (211 U. S., 539), upheld an act requiring coal to be measured for payment of the miner before screening where the contract of employment measured the pay of the miner by the quantity mined. The court said:

"This law does not prevent the operator from screening the coal before it is sent to market; it does not prevent a contract for mining coal by the day, week or month \* \* \*.

"We are unable to say, in the light of the conditions shown in the public inquiry referred to, and in the necessity for such laws evinced in the enactments of the legislatures of various states, that this law had no reasonable relation to the protection of a large class of laborers in the receipt of their just dues and the promotion of the harmonious relations of capital and labor engaged in a great industry in the state.

"Laws tending to prevent fraud and to require honest weights and measures in the transaction of business have frequently been sustained in the courts, although in compelling certain modes of dealing they interfere with the freedom of contract." (At pp. 548 and 550.) This, too, was regulation.

In Powell v. Pennsylvania (127 U. S., 678), the court held that oleomargarine might, itself, be reasonably considered a counterfeit calculated to deceive the buying public, and that it was a legislative question to determine whether the ingredients of this substance, as generally sold, were harmful to the health of the public. In the course of the opinion, the court said:

"Whether the manufacture of oleomargarine, or imitation butter of the kind described in the statute, is, or may be, conducted in such a way, or with such skill and secrecy, as to baffle ordinary inspection, or whether it involves such danger to the public health as to require, for the protection of the people, the entire suppression of the business, rather than its regulation, in such manner as to permit the manufacture and sale of articles of that class that do not contain noxious ingredients, are questions of fact and of public policy which belong to the legislative department to determine." (At p. 685.)

There is nothing in the present case that can be said to be similar in any way to these conditions. There is nothing in the business of an employment agency inherently wrong, or tending towards

wrong. It will probably always be that some of the unemployed will be poor, friendless and among strangers, and therefore, to be imposed upon with less danger than those more fortunately situated, but this fact does not show that the tendency of the business is in any way harmful. It simply affords the dishonest man in the business an opportunity to practice oppression.

A business is not to be prohibited because persons affected by it are likely to be unfortunate. Given opportunity and a dishonest inclination in any business, imposition and fraud are likely to follow. It is to be, therefore, held that all that is necessary to warrant the abolition of a business is that a large part of those affected by it are, in certain respects, subject to imposition?

That this initiative measure violates the Fourteenth Amendment to the Constitution in the respect pointed out is shown by the following authorities:

121 "The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the employment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned." (*Allgeyer v. Louisians*, 165 U. S., 578, 589.)

"As the possession of property, of which a person cannot be deprived, doubtless implies that such property may be acquired, it is safe to say that a state law which undertakes to deprive any class of persons of the general power to acquire property would also be obnoxious to the same provision. Indeed, we may go a step further, and say that, as property can only be legally acquired as between living persons by contract, a general prohibition against entering into contracts with respect to property, or having as their object the acquisition of property, would be equally invalid." (*Holden v. Hardy*, 169 U. S., 366, 391.)

"Life, liberty, property and equal protection of the laws as grouped together in the Constitution are so related that the deprivation of any one may lessen or extinguish the value of the others.

"In so far as a man is deprived of the right to labor, his liberty is restricted, his capacity to earn wages and acquire property is lessened, and he is denied the protection which the law affords those who are permitted to work."

"Liberty means more than freedom from servitude; and the constitutional guarantee is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling." (*Smith v. Texas*, 233 U. S., 630.)

In *Lochner v. New York* (198 U. S., 45), holding unconstitutional a statute of New York, fixing the hours of labor for bakers, it is said:

"We think that there can be no fair doubt that the trade of a baker, in and of itself, is not an unhealthy one to that degree which would authorize the legislature to interfere with the right to labor, and with the right of free contract on the part of the individual, either as employer or employe. In looking through statistics regarding all trades and occupations, it may be true that the trade of a baker does not appear to be as healthy as some other trades, and is also vastly more healthy than still others. To the common understanding the trade of a baker has never been regarded as an unhealthy one. Very likely physicians would not recommend the exercise of that or of any other trade as a remedy for ill health. Some occupations are more healthy than others, but we think there are none which might not come under the power of the legislature to supervise and control the hours of working therein, if the mere fact that the occupation is not absolutely and perfectly healthy is to confer that rights upon the legislative department of the Government. It might be safely affirmed that almost all occupations more or less affect the health. There must be more than the mere fact of the possible existence of some small amount of unhealthiness to warrant legislative interference with liberty. It is unfortunately true that labor, even in any department, may possibly carry with it the seeds of unhealthiness. But are we

122 all, on that account, at the mercy of legislative majorities? A printer, a tinsmith, a locksmith, a carpenter, a cabinet-maker, a drygoods clerk, a bank's, a lawyer's or a physician's clerk, or a clerk in almost any kind of business, would come under the power of the legislature, on this assumption. No trade, no occupation, no mode of earning one's living, could escape this all-pervading power, and the acts of the legislature in limiting the hours of labor in all employments would be valid, although such limitation might seriously cripple the ability of the laborer to support himself and his family. In our large cities there are many buildings into which the sun penetrates for but a short time in each day, and these buildings are occupied by people carrying on the business of bankers, brokers, lawyers, real estate, and many other kinds of business, aided by many clerks, messengers and other employes. Upon the assumption of the validity of this act under review, it is not possible to say that an act, prohibiting lawyers or bank clerks, or others, from contracting to labor for their employers more than eight hours a day, would be invalid. It might be said that it is unhealthy to work more than that number of hours in an apartment lighted by artificial light during the working hours of the day; that the occupation of the bank clerk, the lawyer's clerk, the real estate clerk, or the broker's clerk in such offices is therefore unhealthy, and the legislature in its paternal wisdom must, therefore, have the right to legislate on the subject of and to limit the hours of such labor, and if it exercises that power and its validity be questioned, it is sufficient to say, it has reference to the public health; it has reference to the health of the employes condemned to labor day after day in buildings where the sun never shines; it is a health law, and therefore it is valid, and cannot be questioned by the courts.

"It is also urged, pursuing the same line of argument, that it is to the interest of the state that its population should be strong and robust, and therefore any legislation which may be said to tend to make people healthy must be valid as health laws, enacted under the police power. If this be a valid argument and a justification for this kind of legislation, it follows that the protection of the Federal Constitution from undue interference with liberty of person and freedom of contract is visionary, wherever the law is sought to be justified as a valid exercise of the police power. Scarcely any law but might find shelter under such assumptions, and conduct, properly so called, as well as contract, would come under the restrictive sway of the legislature. Not only the hours of employes, but the hours of employers, could be regulated, and doctors, lawyers, scientists, all professional men, as well as athletes and artisans, could be forbidden to fatigue their brains and bodies by prolonged hours of exercise, lest the fighting strength of the state be impaired. We mention these extreme cases because the contention is extreme. We do not believe in the soundness of the views which uphold this law. On the contrary, we think that such a law as this, although passed in the assumed exercise of the police power, and as relating to the public health, or the health of the employes named, is not within that power, and is invalid. The act is not, within any fair meaning of the term, a health law, but is an illegal interference with the rights of individuals, both employes and employers, to make contracts regarding labor upon such terms as they may think best, or which they may agree upon with the other parties to such contracts. Statutes of the nature of that under review, limiting the hours in which grown and intelligent men may labor to earn their living, are mere meddlesome interferences with the rights of the individual, and they are not saved from condemnation by the claim that they are passed in the exercise of the police power and upon the

123 subject of health of the individual whose rights are interfered with, unless there be some fair ground, reasonable in and of itself, to say that there is material danger to the public health or to the health of the employes, if the hours of labor are not curtailed. If this be not clearly the case the individuals, whose rights are thus made the subject of legislative interference, are under the protection of the Federal Constitution regarding their liberty of contract as well as of person; and the legislature of the state has no power to limit their right as proposed in this statute. All that it could properly do has been done by it with regard to the conduct of bakeries, as provided for in the other sections of the act, above set forth. These several sections provide for the inspection of the premises where the bakery is carried on, with regard to furnishing proper wash-rooms and water-closets, apart from the bake-room, also with regard to providing proper drainage, plumbing and painting; the sections, in addition, provide for the height of the ceiling, the cementing or tiling of the floors, where necessary in the opinion of the factory inspector, and for other things of that nature; alterations are also provided for and are to be made where necessary in the opinion of the inspector, in order to comply with the provisions



of the statute. These various sections may be wise and valid regulations, and they certainly go to the full extent of providing for the cleanliness and the healthiness, so far as possible, of the quarters in which bakeries are to be conducted. Adding to all these requirements, a prohibition to enter into any contract of labor in a bakery for more than a certain number of hours a week, is, in our judgment, so wholly beside the matter of a proper, reasonable and fair provision, as to run counter to that liberty of person and free contract provided for in the Federal Constitution." (At pp. 55-62, *Bessette v. People*, 193 Ill. 334; 56 L. R. A., 558; 62 N. E. 215.)

The purpose of a statute must be determined from the natural and legal effect of the language employed; and whether it is or is not repugnant to the Constitution of the United States must be determined from the natural effect of such statute when put into operation, and not from its proclaimed purpose.

*Minnesota v. Barber*, 136 U. S., 313; 34 L. Ed., 455; 3 Inters. Com. Rep. 185;

*Brimmer v. Rebman*, 138 U. S., 78; 34 L. Ed., 86; 3 Int. Com. Rep., 485; 11 Sup. Ct. Rep., 213;

*Yick Wo v. Hopkins*, 118 U. S., 356; 30 L. Ed., 220; 6 Sup. Ct. Rep., 1064;

*Stat ex rel. Ritchey v. Smith*, 49 Wash., 237, 247;

*Butchers' Union, etc., Co. v. Crescent City Live Stock Co.*, 111 U. S., 746;

*Dent v. West Virginia*, 129 U. S., 114, 121.

In the latter case it is said:

"It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex and condition. This right may in many respects be considered as a distinguishing feature of our republican institutions. Here all vocations are open to every one on like conditions. All may be pursued as sources of livelihood, some requiring years of study and great learning for their successful prosecution.

124 The interest, or, as it is sometimes termed, the estate acquired in them, that is, the right to continue their prosecution, is often of great value to the possessors, and cannot be arbitrarily taken from them, any more than their real or personal property can be thus taken." (At pp. 121 and 122.)

*Lochner v. New York*, 198 U. S., 43, 53;

*Jones v. Leslie*, 61 Wash., 107, 110;

*Adair v. U. S.*, 208 U. S., 161, 172;

*In re O'Neil*, 41 Wash., 174, 184.

In *Little v. Tanner* (208 Fed., 605), the court, in using the language quoted in the majority opinion:

"It is plainly manifest that no merchant could afford to pay the sum of \$6000.00 annually for the mere privilege of giving away trading stamps or allowing discounts on his cash sales. But if this

were the only objection to the act it may be that the courts would be powerless to enjoin its execution." (At p. 609.)

did not intend to concede that a lawful business could be prohibited by the legislature, for the holding is directly to the contrary. The sense in which the language quoted is used is shown by the sentences immediately preceding and following the quotation:

"The court is fully satisfied from a bare inspection of the act, without more, and without considering the affidavits on file, that it is and was intended to be prohibitive of the business methods against which it is directed. \* \* \* The power of taxation rests upon necessity, and is inherent in every independent state. It is as extensive as the range of subjects over which the government extends; it is absolute and unlimited, in the absence of constitutional limitations and restraints, and carries with it the power to embarrass and destroy."

That the holding of the court was that a lawful and beneficial business could not be prohibited by an act of the legislature is shown by the following from that opinion:

"Is there any just basis for the classification here attempted? We discover none. The legality of what is generally known as the trading stamp business has been very generally affirmed by the courts." (At p. 610.)

The effect of this decision is that the state, itself, through its courts, having held the trading stamp business lawful, it was not necessary for the Federal Court in such a cause to reinvestigate that question; that its legality would be taken for granted where the legislature had sought to prohibit it, and that it being certain  
125 that such a lawful business may not be directly prohibited, it cannot be accomplished indirectly under color of a revenue measure.

In *State v. Moore*, (22 L. R. A., 472, 475), it was said:

"The general scope and tendency of the act, in connection with the exaction of the very large license fee, induce us to believe that, viewed as a police regulation, it is so far restrictive and prohibitory as to contravene those fundamental principles we have enunciated, and which are intended to protect the citizen in the pursuit of an occupation not inherently dangerous or harmful to the public. It may be regulated, but it cannot be indirectly prohibited by an exercise of the police power."

There is more reason for holding the law valid prohibiting the use of trading stamps than the law in the present case, for, while there is no element in the employment agency business, itself, which can be said to have within it a wrongful tendency, yet, in the case of the trading stamps, given away by merchants with purchases, it may plausibly be contended there is present in the scheme, itself, that condition that encourages the members of the buying public to believe that they are "getting something for nothing," which is, itself, the dangerous element in all gambling.

The act in question cannot be brought by analogy within the familiar cases regarding intoxicating liquors, oleomargarine, minors

working at certain employments, limiting the hours of work by women, women working in saloons, minors entering pool rooms, maintenance of race tracks, contracts with minors, trading stamps and the like.

It will be noted that the initiative measure does not denounce the employment agency business as harmful, but simply declares:

"That the system of collecting fees from the workers for furnishing them with employment, or with information leading thereto, results frequently in their becoming the victims of imposition and extortion."

People v. Warden, 157 N. Y., 116; 43 L. R. A., 264, 268, 271.

It is true that very few cases are found where the highest court of the land has declared a law enacted by a state under color of its police power unconstitutional, but this cannot be considered  
126 an argument, for occasions where legislatures have overlooked the fact that their function is to render more secure men in their lawful callings, and not to deny them the right to engage therein, are scarcer still than such decisions.

It is said in the majority opinion that the state is qualified to legislate concerning local conditions, but the right of the laborer to work; to sell his labor for bread and to hire some one to find him a place to work and to sell it, smacks more of fundamental and primary principles than of local, or temporary conditions. Misfortune and dishonesty are of neither time nor place. Primarily, the legislature is the judge of such conditions, but its acts will not stand where it is palpably in excess of the legislative power.

To disregard concrete examples of the effect, or scope of a ruling, or holding, if extended to other instances, under like conditions, is to leave one in the realm of pure abstraction to find the right and wrong. Great care is necessary to avoid the danger of arguing from analogy, but it is as necessary to look forward to determine the possible effect of a ruling or holding, as it is to look back along the line of precedents, in order to determine whether we are keeping within proper bounds. The only thing that prevents case-law becoming a wilderness of single instances is the fact that, given the same essential elements and reasons, the same rule will apply and result.

This law goes beyond what is reasonable in a remedy when it goes beyond the disease and deprives the patient of life. If the individual grocer defrauds his customers, by his weights or otherwise, no one would contend that the business of the grocer should be prohibited.

If this law may be upheld, it is not perceived why some other equally well meaning legislature or electorate might not, with better reason, upon recital that the negro was, in certain respects, inferior  
127 to the white race and was liable to be imposed upon by the dishonest white man, forbid all contracts between negroes and white men.

If this act be valid, may not one be that recites that, upon frequent occasions, labor leaders have exploited the members of their

organizations for their own benefit, and that, therefore, all labor organizations should be prohibited—even while everyone concedes the essential benefits which result from them when honestly conducted?

It would follow that an act was, likewise, valid which recited that frequently newspapers have become agencies for foisting upon the public worthless nostrums, and that, therefore, all newspapers should be prohibited, because of the wrongful manner in which certain ones were conducted.

To say that this is a far fetched illustration and that nothing of the kind is likely to happen under our system, is to beg, or rather, confess the point. The argument that the press, because it is a great engine in forming public opinion will always be able to afford its own protection defeats itself for the position to be maintained is that the majority, upon consideration, should control.

But the rightful exercise of this power rests upon consideration, the weighing of the right and wrong by the majority and by each individual of the majority. The strength of the press is in propaganda. The merchant or agent is one, his customers many. If his customers are dissatisfied and his right depends upon relative strength in a propaganda, his protest is drowned by the clamor of the many in opposition to him. So this argument would affirm that rights should be protected by the volume of appeal to the majority and not by the righteousness of any consideration of such majority.

Courts will disregard the plea that a legislative act is an arbitrary and unreasonable exercise of power where it is merely shown that one of equal, though of less conspicuous guilt, is let go free while such other is condemned. Some plea is one of evasion and not of justification. It is a prayer, not for the equal protection of the law, but for an equal license, or indulgence, under the law. It may be easier and simpler to prohibit a business than regulate or prohibit wrong conduct in it, but where neither public health, safety nor morals are concerned, for doubtful convenience' sake in such case to say "Thou shalt not", alike to right and wrong, to the wicked and the just, is to fail in the assertion of that for which laws and government were born.

For the foregoing reasons, I dissent.

Endorsements: Opinion. Filed in the U. S. District Court for the Eastern District of Washington, September 9, 1915. W. H. Hare, Clerk. by S. M. Russell, Deputy.

129 In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2064.

JOE ADAMS et al., Plaintiffs,

vs.

W. V. TANNER, Attorney General of the State of Washington, and  
GEORGE H. CRANDALL, Prosecuting Attorney of Spokane County,  
State of Washington, Defendants.

*Order Denying Injunction Pendente Lite and Granting Motion to  
Dismiss Bill of Complaint.*

This cause coming on regularly to be heard before the Hon. W. B. Gilbert, United States Circuit Judge, Hon. Edward E. Cushman and Hon. Jeremiah Neterer, United States District Judges, at the City of Seattle, Washington, upon the application of the complainants for a temporary injunction herein, and upon the motion of the defendants to dismiss said bill of complaint; the complainants being represented by their solicitors, Messrs. Cannon & Ferris, and the defendants being represented by their solicitors, W. V. Tanner, Attorney General, and George H. Crandall, Prosecuting Attorney, and the court having heard the arguments of counsel and being fully advised in the premises, and opinion and dissenting opinion herein having been filed.

Now, therefore, in accordance with said opinion, and on motion of the solicitors for the defendants, it is ordered that the application for a temporary injunction be, and the same hereby is, denied.

It is further ordered that said motions of defendants herein for dismissing said bill of complaint be, and the same hereby are, granted, and that the bill of complaint be, and the same hereby is, dismissed, to which complainants and each of them except, and their exceptions are hereby duly allowed.

Done in open court this 14th day of September, 1915.

(Signed)

JEREMIAH NETERER, *Judge.*

130 Endorsements: Order. Filed in the U. S. District Court for the Eastern District of Washington, September 15, 1915.  
W. H. Hare, clerk.

131 In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2064.

JOE ADAMS; ALBERT M. MACHO; W. MATHEWSON; LUCILE C. Greever; J. W. Buhler and J. C. Mottaz, Copartners Doing Business under the Firm-name and Style of Home Employment Agency; J. T. Pierce and J. D. Beattie, Copartners Doing Business under the Firm-name and Style of National Employment Agency; Herman Rae and F. L. Buell, Copartners Doing Business under the Firm-name and Style of the Scandinavian-American Employment Agency; W. J. Lawrence; W. A. Miller; J. S. Ross and J. W. Rogers, Copartners Doing Business under the Firm-name and Style of Rogers & Ross; Ellie C. Travers; Charles Lewis and Augustus Anderson, Copartners Doing Business under the Firm-name and Style of Lewis & Anderson Labor Agency; F. E. Featherstone and J. L. Featherstone, Copartners Doing Business under the Firm-name and Style of Featherstone Labor Agency, and H. C. Willis, Plaintiffs and Appellants,

vs.

W. V. TANNER, Attorney General of the State of Washington, and George H. Crandall, Prosecuting Attorney of Spokane County, State of Washington, Defendants and Appellees.

*Petition for Allowance of Appeal.*

The above named Joe Adams; Albert M. Macho; W. Mathewson; Lucile C. Greever; J. W. Buhler and J. C. Mottaz, copartners doing business under the firm name and style of Home Employment Agency; J. T. Pierce and J. D. Beattie, copartners doing business under the firm name and style of National Employment Agency; Herman Rae and F. L. Buell, copartners doing business under the firm name and style of Scandinavian-American Employment Agency; W. J. Lawrence; W. A. Miller; J. S. Ross and J. W. Rogers, copartners doing business under the firm name and style of Rogers & Ross; Ellie C. Travers; Charles Lewis and Augustus Anderson, copartners doing business under the firm name and style of Lewis & Anderson Labor Agency; F. E. Featherstone and J. L. Featherstone, copartners doing business under the firm name and style of Featherstone Labor Agency; and H. C. Willis, appellants, conceiving themselves aggrieved by the judgment and order of the United States District Court rendered on the 14th day of September, 1915, do hereby appeal from said judgment and order to the Supreme Court of the United States and pray that this, their appeal, may be allowed, and that a transcript of the record and proceedings in said cause, and all things concerning the same upon which said order and judgment were made, duly authenticated, may be sent to the Supreme Court of the United States in order that the errors complained of in the Assignments of Errors herein filed by said

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appellants may be reviewed, and if error be found, corrected according to the laws and customs of the United States.

(Signed)

D. V. HALVERSTADT,  
CANNON & FERRIS,  
*Attorneys for Appellants.*

Endorsement: Petition for Allowance of Appeal. Filed September 29, 1915. W. H. Hare, Clerk, by S. M. Russell, Deputy.

133 In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2064.

JOE ADAMS, ALBERT M. MACHO, W. MATHEWSON, LUCILE C. Greever; J. W. Buhler and J. C. Mottaz, Copartners Doing Business under the Firm-name and Style of Home Employment Agency; J. T. Pierce and J. D. Beattie, Copartners Doing Business under the Firm-name and Style of National Employment Agency; Herman Rae and F. L. Buell, Copartners Doing Business under the Firm-name and Style of the Scandinavian-American Employment Agency; W. J. Lawrence, W. A. Miller; J. S. Ross and J. W. Rogers, Copartners Doing Business under the Firm-name and Style of Rogers & Ross; Ellie C. Travers; Charles Lewis and Augustus Anderson, Copartners Doing Business under the Firm-name and Style of Lewis & Anderson Labor Agency; F. E. Featherstone and J. L. Featherstone, Copartners Doing Business under the Firm-name and Style of Featherstone Labor Agency, and H. C. Willis, Plaintiffs and Appellants.

vs.

W. V. TANNER, Attorney General of the State of Washington, and George H. Crandall, Prosecuting Attorney of Spokane County, State of Washington, Defendants and Appellees.

*Assignments of Error.*

Come now the appellants in the above entitled cause and aver and show that in the records and proceedings in said cause the United States District Court for the Eastern District of Washington, Northern Division, erred to the grievous injury and wrong of the appellants in said cause and to the prejudice, and against the rights of the appellants herein in the following particulars, to-wit:

I.

That the court erred in denying a temporary injunction in said cause;

II.

That the court erred in denying a permanent injunction in said cause;



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## III.

That the court erred in granting the motion to dismiss the bill of complaint in said cause;

## IV.

That the court erred in entering judgment dismissing said action;

## V.

That said District Court erred in holding that Initiative Measure No. 8, entitled "An Act to prohibit the collection *or* remuneration of fees from workers for the securing of employment or furnishing information leading thereto, and providing a penalty for violation thereof," adopted at the general election held in the State of Washington, on the 3rd day of November, 1914, being Chapter 1 of the Laws of the State of Washington for the year 1915, did not deprive said appellants of the liberty guaranteed them by Section 1 of the 14th Amendment to the Constitution of the United States.

## VI.

Said District Court erred in holding that said Initiative No. 8 does not deprive these appellants of their property without due process of law, contrary to Section 1 of the 14th Amendment to the Constitution of the United States.

## VII.

Said District Court erred in holding that said Initiative No. 8 does not deprive the appellants of rights, privileges and immunities guaranteed to them by Section 1 of the 14th Amendment to the Constitution of the United States.

## VIII.

Said District Court erred in holding said Initiative No. 8 does not deny these appellants the equal protection of the law, contrary to Section 1 of the 14th Amendment to the Constitution of the United States.

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## IX.

That said District Court erred in holding that said Initiative No. 8 does not deprive the appellants of liberty and property without due process of law, in violation of Section 3 of Article 1 of the Constitution of the State of Washington.

## X.

That said District Court erred in holding that said Initiative No. 8 does not grant to citizens privileges or immunities which upon the same terms do not equally apply to all citizens of the State of Wash-

ington, in violation of Section 12 of Article I of the Constitution of the State of Washington.

Wherefore, for these and other manifest errors appearing in the record, the appellants pray that the judgment of the United States District Court for the Eastern District of Washington be reversed and set aside and held for naught, and that judgment be rendered for the appellants herein, granting to them their rights under the Constitution of the United States and the Constitution of the State of Washington.

(Signed)

D. V. HALVERSTADT,

CANNON & FERRIS,

*Attorneys for Appellants.*

Endorsements: Assignments of Error. Filed September 29, 1915. W. H. Hare, Clerk, by S. M. Russell, Deputy.

136 In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2064.

JOE ADAMS, ALBERT M. MACHO, W. MATHEWSON, LUCILE C. Greever; J. W. Buhler and J. C. Mottaz, Copartners Doing Business under the Firm-name and Style of Home Employment Agency; J. T. Pierce and J. D. Beattie, Copartners Doing Business under the Firm-name and Style of National Employment Agency; Herman Rae and F. L. Buell, Copartners Doing Business under the Firm-name and Style of the Scandinavian-American Employment Agency; W. J. Lawrence, W. A. Miller; J. S. Ross and J. W. Rogers, Copartners Doing Business under the Firm-name and Style of Rogers & Ross; Effie C. Travers, Charles Lewis and Augustus Anderson, Copartners Doing Business under the Firm-name and Style of Lewis & Anderson Labor Agency; F. E. Featherstone and J. L. Featherstone, Copartners Doing Business under the Firm-name and Style of Featherstone Labor Agency and H. C. Willis, Plaintiffs and Appellants.

VS.

W. V. TANNER, Attorney General of the State of Washington, and George H. Crandall, Prosecuting Attorney of Spokane County, State of Washington, Defendants and Appellees.

### *Order Allowing Appeal.*

It is hereby ordered that the appeal prayed for by the above named appellants in the above entitled cause to the Supreme Court of the United States be, and the same is hereby allowed as prayed.

Done in open court this 29th day of September, 1915.

(Signed)

FRANK H. RUDKIN, *Judge.*

Endorsements: Order Allowing Appeal. Filed September 29, 1915. W. H. Hare, Clerk, by S. M. Russell, Deputy.

137 In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2064

JOE ADAMS, ALBERT M. MACHO, W. MATTHEWSON, LEVIE C. GREEVER, J. W. BULDER and J. C. MOTT, Copartners Doing Business under the Firm-name and Style of Home Employment Agency, J. T. PIERCE and J. D. BEATTIE, Copartners Doing Business under the Firm-name and Style of National Employment Agency, HERMAN RAE and F. L. BELL, Copartners Doing Business under the Firm-name and Style of the Scandinavian American Employment Agency, W. J. LAWRENCE, W. S. MILLER, J. W. RAE and J. W. ROGERS, Copartners Doing Business under the Firm-name and Style of Rogers & RAE, Effie C. TAYLOR, Charles LEWIS and Augustus ANDERSON, Copartners Doing Business under the Firm-name and Style of Lewis & Anderson Labor Agency, F. W. FEATHERSTONE and J. L. FEATHERSTONE, Copartners Doing Business under the Firm-name and Style of Featherstone Labor Agency, and H. C. WILLIS, Plaintiffs and Appellants.

vs.

W. V. TANNER, Attorney General of the State of Washington, and George H. CRANDALL, Prosecuting Attorney of Spokane County, State of Washington, Defendants and Appellees.

*Order Fixing Amount of Bond on Appeal.*

On reading the petition of the above named appellants in the above-entitled cause for the allowance of an appeal to the Supreme Court of the United States from the judgment and order of the District Court of the United States for the Eastern District of Washington, Northern Division, reached herein.

It is ordered that the appellants above named execute with the in the office of the clerk of the great central court a bond on appeal conditioned according to law in the sum of two hundred and fifty dollars (\$250.00), with a good and sufficient surety to be approved by the undersigned.

Done in open court this 20th day of September, 1903.

(Signed)

FRANK H. RICHMOND, Judge.

138 *Enforcement. Order Fixing Amount of Bond on Appeal.*  
Filed September 22, 1903. W. H. BIRD, Clerk for F. W. BELL, Deputy.

139 In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2064.

JOE ADAMS, ALBERT M. MACHO, W. MATHEWSON, LUCILE C. Greever; J. W. Buhler and J. C. Mottaz, Copartners Doing Business under the Firm-name and Style of Home Employment Agency; J. T. Pierce and J. D. Beattie, Copartners Doing Business under the Firm-name and Style of National Employment Agency; Herman Rae and F. L. Buell, Copartners Doing Business under the Firm-name and Style of the Scandinavian-American Employment Agency; W. J. Lawrence, W. A. Miller; J. S. Ross and J. W. Rogers, Copartners Doing Business under the Firm-name and Style of Rogers & Ross; Effie C. Travers; Charles Lewis and Augustus Anderson, Copartners Doing Business under the Firm-name and Style of Lewis & Anderson Labor Agency; F. E. Featherstone and J. L. Featherstone, Copartners Doing Business under the Firm-name and Style of Featherstone Labor Agency and H. C. Willis, Plaintiffs and Appellants.

vs.

W. V. TANNER, Attorney General of the State of Washington, and George H. Crandall, Prosecuting Attorney of Spokane County, State of Washington, Defendants and Appellees.

*Appeal Bond.*

Know all men by these presents: That we, Joe Adams; Albert M. Macho; W. Mathewson; Lucile C. Greever; J. W. Buhler and J. C. Mottaz, copartners doing business under the firm name and style of Home Employment Agency; J. T. Pierce and J. D. Beattie, copartners doing business under the firm name and style of National Employment Agency; Herman Rae and F. L. Buell, copartners doing business under the firm name and style of Scandinavian-American Employment Agency; W. J. Lawrence; W. A. Miller; J. S. Ross and J. W. Rogers, copartners doing business under the firm name and style of Rogers & Ross; Effie C. Travers; Charles Lewis and Augustus Anderson, copartners doing business under the firm name and style of Lewis & Anderson Labor Agency; F. E. Featherstone and J. L. Featherstone, copartners doing business

140 under the firm name and style of Featherstone Labor Agency and H. C. Willis, appellants above named, as principals, and National Surety Company, a corporation, organized and existing under and by virtue of the laws of the State of New York, and authorized to act as surety and to do business in the State of Washington, as surety, are held and firmly bound unto W. V. Tanner, Attorney-General of the State of Washington, and George R. Crandall, Prosecuting Attorney of Spokane County, State of Washington appellees above named, in the full and just sum of two hundred and fifty dollars (\$250.00), for the payment of which well and truly to be made, we hereby bind our and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated at Spokane, Washington, this 29th day of September, 1915.

The condition of the foregoing obligation is such that

Whereas the appellants above named have duly appealed from the final judgment and order herein to the Supreme Court of the United States; and

Whereas, the above entitled court fixed the amount of bond to be given by said appellants upon said appeal in the sum of two hundred and fifty dollars (\$250.00);

Now, therefore, if the appellants shall prosecute their appeal to effect and if they fail to make their plea good, shall answer all costs, then this obligation shall be null and void; otherwise to remain in full force and effect.

JOE ADAMS,  
ALBERT M. MACHO,  
W. MATHEWSON,  
LUCILE C. GREEVER;  
J. W. RUHLER AND  
J. C. MOTTAZ,

*Copartners doing business under the firm name  
and style of Home Employment Agency;*

J. T. PIERCE AND  
J. D. BEATTIE,

*Copartners doing business under the firm name  
and style of National Employment Agency;*

HERMAN RAE AND  
F. L. BUELL,

*Copartners doing business under the firm name  
and style of the Scandinavian-American  
Employment Agency;*

W. J. LAWRENCE,  
W. A. MILLER;  
J. S. ROSS AND  
J. W. ROGERS,

*Copartners doing business under the firm name  
and style of Rogers & Ross;*

EFFIE C. TRAVERS;  
CHARLES LEWIS AND  
AUGUSTUS ANDERSON,

*Copartners doing business under the firm name  
and style of Lewis & Anderson Labor  
Agency;*

F. E. FEATHERSTONE AND  
J. L. FEATHERSTONE,

*Copartners doing business under the firm name  
and style of Featherstone Labor Agency, and  
H. C. WILLIS.*

(Signed) By D. V. HALVERSTADT,  
CANNON & FERRIS,

*Their Attorneys.*

NATIONAL SURETY COMPANY,

[CORPORATE SEAL.]

(Signed) By JAMES A. BROWN,

*Resident Vice President.*

Attest:

(Signed) S. A. MITCHELL,

*Resident Assistant Secretary.*

The above and foregoing bond and the surety thereon is approved this 29th day of September, 1915.

(Signed)

FRANK H. RUDKIN, *Judge*.

Endorsements: Appeal Bond. Filed September 29, 1915. W. H. Hare, Clerk, by S. M. Russell, Deputy.

142 In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2064.

JOE ADAMS, ALBERT M. MACHO, W. MATHEWSON, LUCILE C. Greever; J. W. Buhler and J. C. Mottaz, Copartners Doing Business under the Firm-name and Style of Home Employment Agency; J. T. Pierce and J. D. Beattie, Copartners Doing Business under the Firm-name and Style of National Employment Agency; Herman Rae and F. L. Buell, Copartners Doing Business under the Firm-name and Style of the Scandinavian-American Employment Agency; W. J. Lawrence, W. A. Miller; J. S. Ross and J. W. Rogers, Copartners Doing Business under the Firm-name and Style of Rogers & Ross; Effie C. Travers; Charles Lewis and Augustus Anderson, Copartners Doing Business under the Firm-name and Style of Lewis & Anderson Labor Agency; F. E. Featherstone and J. L. Featherstone, Copartners Doing Business under the Firm-name and Style of Featherstone Labor Agency, and H. C. Willis, Plaintiffs and Appellants.

vs.

W. V. TANNER, Attorney General of the State of Washington, and George H. Crandall, Prosecuting Attorney of Spokane County, State of Washington, Defendants and Appellees.

*Citation.*

UNITED STATES OF AMERICA:

The President of the United States, to W. V. Tanner, Attorney General of the State of Washington, and George R. Crandall, Prosecuting Attorney of Spokane County, State of Washington, Greeting:

You and each of you are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington, in the District of Columbia, within sixty (60) days after date of this citation, pursuant to an appeal allowed and filed in the clerk's office of the United States District Court for the Eastern District of Washington, Northern Division, wherein Joe Adams; Albert M. Macho; W. Mathewson; Lucile C. Greever; J. W. Buhler and J. C. Mottaz, copartners doing business under the firm name and style of Home Employment Agency; J. T. Pierce and J. D. Beattie, copartners doing business under the

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firm name and style of National Employment Agency; Herman Rae and F. L. Buell, copartners doing business under the firm name and style of Scandinavian-American Employment Agency; W. J. Lawrence; W. A. Miller; J. S. Ross and J. W. Rogers, copartners doing business under the firm name and style of Rogers & Ross; Effie C. Travers; Charles Lewis and Augustus Anderson, copartners doing business under the firm name and style of Lewis & Anderson Labor Agency; F. E. Featherstone and J. L. Featherstone, copartners doing business under the firm name and style of Featherstone Labor Agency; and H. C. Willis, are appellants and you are appellees, to show cause, if any there be, why the judgment and order rendered against the said appellants, as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Frank H. Rudkin, United States District Judge for the Eastern District of Washington, and the seal of said United States District Court this 29th day of September, 1915.

[SEAL.]

(Signed) FRANK H. RUDKIN,

*United States District Judge for the Eastern*

*District of Washington, Northern Division.*

Attest:

(Signed)

W. H. HARE, *Clerk.*

Endorsements: Citation. Filed September 29, 1915. W. H. Hare, Clerk, by S. M. Russell, Deputy.



The above and foregoing bond and the surety thereon is approved this 29th day of September, 1915.

(Signed)

FRANK H. RUDKIN, *Judge*.

Endorsements: Appeal Bond. Filed September 29, 1915. W. H. Hare, Clerk, by S. M. Russell, Deputy.

142 In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2064.

JOE ADAMS, ALBERT M. MACHO, W. MATHEWSON, LUCILE C. Greever; J. W. Buhler and J. C. Mottaz, Copartners Doing Business under the Firm-name and Style of Home Employment Agency; J. T. Pierce and J. D. Beattie, Copartners Doing Business under the Firm-name and Style of National Employment Agency; Herman Rae and F. L. Buell, Copartners Doing Business under the Firm-name and Style of the Scandinavian-American Employment Agency; W. J. Lawrence, W. A. Miller; J. S. Ross and J. W. Rogers, Copartners Doing Business under the Firm-name and Style of Rogers & Ross; Effie C. Travers; Charles Lewis and Augustus Anderson, Copartners Doing Business under the Firm-name and Style of Lewis & Anderson Labor Agency; F. E. Featherstone and J. L. Featherstone, Copartners Doing Business under the Firm-name and Style of Featherstone Labor Agency, and H. C. Willis, Plaintiffs and Appellants.

vs.

W. V. TANNER, Attorney General of the State of Washington, and George H. Crandall, Prosecuting Attorney of Spokane County, State of Washington, Defendants and Appellees.

*Citation.*

UNITED STATES OF AMERICA:

The President of the United States, to W. V. Tanner, Attorney General of the State of Washington, and George R. Crandall, Prosecuting Attorney of Spokane County, State of Washington, Greeting:

You and each of you are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington, in the District of Columbia, within sixty (60) days after date of this citation, pursuant to an appeal allowed and filed in the clerk's office of the United States District Court for the Eastern District of Washington, Northern Division, wherein Joe Adams; Albert M. Macho; W. Mathewson; Lucile C. Greever; J. W. Buhler and J. C. Mottaz, copartners doing business under the firm name and style of Home Employment Agency; J. T. Pierce and J. D. Beattie, copartners doing business under the

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firm name and style of National Employment Agency; Herman Rae and F. L. Buell, copartners doing business under the firm name and style of Scandinavian-American Employment Agency; W. J. Lawrence; W. A. Miller; J. S. Ross and J. W. Rogers, copartners doing business under the firm name and style of Rogers & Ross; Effie C. Travers; Charles Lewis and Augustus Anderson, copartners doing business under the firm name and style of Lewis & Anderson Labor Agency; F. E. Featherstone and J. L. Featherstone, copartners doing business under the firm name and style of Featherstone Labor Agency; and H. C. Willis, are appellants and you are appellees, to show cause, if any there be, why the judgment and order rendered against the said appellants, as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Frank H. Rudkin, United States District Judge for the Eastern District of Washington, and the seal of said United States District Court this 29th day of September, 1915.

[SEAL.] (Signed) FRANK H. RUDKIN,  
*United States District Judge for the Eastern  
District of Washington, Northern Division.*

Attest:

(Signed) W. H. HARE, *Clerk.*

Endorsements: Citation. Filed September 29, 1915. W. H. Hare, Clerk, by S. M. Russell, Deputy.

144 In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2064.

JOE ADAMS, ALBERT M. MACHO, W. MATHEWSON, LUCILE Greever; J. W. Buhler and J. C. Mottaz, Copartners Doing Business under the Firm-name and Style of Home Employment Agency; J. T. Pierce and J. D. Beattie, Copartners Doing Business under the Firm-name and Style of National Employment Agency; Herman Rae and F. L. Buell, Copartners Doing Business under the Firm-name and Style of the Scandinavian-American Employment Agency; W. J. Lawrence, W. A. Miller; J. S. Rogers and J. W. Rogers, Copartners Doing Business under the Firm-name and Style of Rogers & Ross; Effie C. Travers; Charles Lewis and Augustus Anderson, Copartners Doing Business under the Firm-name and Style of Lewis & Anderson Labor Agency; F. Featherstone and J. L. Featherstone, Copartners Doing Business under the Firm-name and Style of Featherstone Labor Agency and H. C. Willis, Plaintiffs and Appellants,

vs.

W. V. TANNER, Attorney General of the State of Washington, and George H. Crandall, Prosecuting Attorney of Spokane County, State of Washington, Defendants and Appellees.

*Præcipe for Record on Appeal.*

To the Clerk of the above entitled Court:

Please prepare and certify forthwith a complete transcript of the entire record in the above entitled cause on appeal to the Supreme Court of the United States, except Petition for Rehearing and Affidavit of Service.

(Signed)

D. V. HALVERSTADT,  
CANNON & FERRIS,  
*Attorneys for Appellants.*

Endorsements: *Præcipe for Record on Appeal.* Filed September 29, 1915. W. H. Hare, Clerk, by S. M. Russell, Deputy.

145 In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2064.

JOE ADAMS, ALBERT M. MACHO, W. MATHEWSON, LUCILE C. Greever; J. W. Buhler and J. C. Mottaz, Copartners Doing Business under the Firm-name and Style of Home Employment Agency; J. T. Pierce and J. D. Beattie, Copartners Doing Business under the Firm-name and Style of National Employment Agency; Herman Rae and F. L. Buell, Copartners Doing Business under the Firm-name and Style of the Scandinavian-American Employment Agency; W. J. Lawrence, W. A. Miller; J. S. Ross and J. W. Rogers, Copartners Doing Business under the Firm-name and Style of Rogers & Ross; Ellie C. Travers; Charles Lewis and Augustus Anderson, Copartners Doing Business under the Firm-name and Style of Lewis & Anderson Labor Agency; F. E. Featherstone and J. L. Featherstone, Copartners Doing Business under the Firm-name and Style of Featherstone Labor Agency, and H. C. Willis, Plaintiffs and Appellants,

vs.

W. V. TANNER, Attorney General of the State of Washington, and George H. Crandall, Prosecuting Attorney of Spokane County, State of Washington, Defendants and Appellees.

*Acceptance of Service.*

Due, regular and timely service of the citation on appeal of the above entitled cause from the United States District Court for the Eastern District of Washington, Northern Division, to the Supreme Court of the United States, and of præcipe for Record on Appeal of said cause, and receipt of copies of the Petition for allowance of Appeal, Assignment of Errors, Order fixing amount of Bond on Appeal and Appeal Bond for the appeal of said cause and Citation on said appeal is hereby admitted this 30th day of September, 1915.

(Signed)

W. V. TANNER,

*Attorney for Appellees.*

Endorsements: Acceptance of Service. Filed October 1, 1915.  
W. H. Hare, Clerk, by S. M. Russell, Deputy.

146 In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2064.

JOE ADAMS et al., Plaintiffs,

vs.

W. V. TANNER, Attorney General of the State of Washington, and  
George H. Crandall, Prosecuting Attorney of Spokane County,  
State of Washington, Defendants.

*Clerk's Certificate.*

UNITED STATES OF AMERICA,  
*Eastern District of Washington, ss:*

I, W. H. Hare, Clerk of the District Court of the United States in and for the Eastern District of Washington, do hereby certify that the foregoing typewritten pages constitute and are a full, true, correct and complete copy of so much of the record, pleadings, orders and other proceedings had in said action, as the same remain of record and on file in the office of the Clerk of said District Court, as called for by the plaintiffs and appellants in their præcipe; and that the same constitute my return to the order of appeal from the judgment of the District Court of the United States for the Eastern District of Washington to the Supreme Court of the United States, lodged and filed in my office on the 29th day of September, 1915.

I further certify that I hereto attach and herewith transmit the original Citation issued in said cause.

I further certify that the fees of the Clerk of this Court for preparing and certifying to the foregoing typewritten record amount to the sum of sixty-two dollars and sixty cents (\$62.60), and that the same has been paid in full by Cannon & Ferris, attorneys for the plaintiffs and appellants.

147 In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, at the City of Spokane, in said Eastern District of Washington, in the Ninth Judicial Circuit, this 20th day of October, A. D. 1915, and the Independence of the United States of America the one hundred and fortieth.

[Seal of the United States District Court, Eastern District of Washington.]

W. H. HARE,  
*Clerk U. S. District Court for the Eastern  
District of Washington.*

148 In the District Court of the United States for the Eastern District of Washington, Northern Division.

JOE ADAMS, ALBERT M. MACHO, W. MATHEWSON, LUCILE C. Greever; J. W. Buhler and J. C. Mottaz, Copartners Doing Business under the Firm-name and Style of Home Employment Agency; J. T. Pierce and J. D. Beattie, Copartners Doing Business under the Firm-name and Style of National Employment Agency; Herman Rae and F. L. Buell, Copartners Doing Business under the Firm-name and Style of the Scandinavian-American Employment Agency; W. J. Lawrence, W. A. Miller; J. S. Ross and J. W. Rogers, Copartners Doing Business under the Firm-name and Style of Rogers & Ross; Effie C. Travers; Charles Lewis and Augustus Anderson, Copartners Doing Business under the Firm-name and Style of Lewis & Anderson Labor Agency; F. E. Featherstone and J. L. Featherstone, Copartners Doing Business under the Firm-name and Style of Featherstone Labor Agency, and H. C. Willis, Plaintiffs and Appellants,

VS.

W. V. TANNER, Attorney General of the State of Washington, and George H. Crandall, Prosecuting Attorney of Spokane County, State of Washington, Defendants and Appellees.

*Citation.*

UNITED STATES OF AMERICA:

The President of the United States to W. V. Tanner, Attorney General of the State of Washington, and George R. Crandall, Prosecuting Attorney of Spokane County, State of Washington, Greeting:

You and each of you are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington, in the District of Columbia, within sixty (60)  
 149 days after date of this citation, pursuant to an appeal allowed and filed in the Clerk's office of the United States District Court for the Eastern District of Washington, Northern Division, wherein Joe Adams; Albert M. Macho; W. Mathewson; Lucile C. Greever; J. W. Buhler, and J. C. Mottaz, co-partners doing business under the firm name and style of Home Employment Agency; J. T. Pierce and J. D. Beattie, co-partners doing business under the firm name and style of National Employment agency; Herman Rae and F. L. Buell, co-partners doing business under the firm name and style of Scandinavian-American Employment Agency; W. J. Lawrence; W. A. Miller; J. S. Ross and J. W. Rogers, co-partners doing business under the firm name and style of Rogers & Ross; Effie C. Travers; Charles Lewis and Augustus Anderson, co-partners doing business under the firm name and style of Lewis & Anderson Labor Agency, F. E. Featherstone and J. L. Featherstone, co-partners doing business under the firm name and style of Featherstone Labor Agency, and H. C. Willis, are appellants and you are appellees, to

show cause, if any there be, why the judgment and order rendered against the said appellants, as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Frank H. Rudkin, United States District Judge for the Eastern District of Washington and the seal of said United States District Court this 29 day of September, 1915.

[Seal of the United States District Court, Eastern District  
of Washington.]

FRANK H. RUDKIN,  
*United States District Judge for the Eastern  
District of Washington, Northern Division.*

Attest:

W. H. HARE, *Clerk.*

150 [Endorsed:] No. 2064. In the U. S. District Court, Eastern District of Washington, Northern Division. Joe Adams et al., Plaintiffs and Appellants, v. W. V. Tanner et al., Defendants and Appellees. Citation. Due service of within — by receipt of a true copy thereof admitted this — day of —, —, —, Attorney for — —. Filed September 29, 1905. W. H. Hare, Clerk, by S. M. Russell, Deputy. Edward J. Cannon, Rooms 1-2-3 Hypotheek Bank Bldg., 120 Wall St., Spokane, Washington, Attorney for Plaintiffs and Appellants.

Endorsed on cover: File No. 24,971. E. Washington D. C. U. S. Term No. 688. Joe Adams et al., appellants, vs. W. V. Tanner, Attorney General of the State of Washington, and George H. Crandall, Prosecuting Attorney of Spokane County, State of Washington. Filed November 1st, 1915. File No. 24,971.



# Supreme Court of the United States

October Term, 1916.

---

JOE ADAMS, *et al.*,

*Appellants,*

*vs.*

W. V. TANNER, Attorney General of the State of  
Washington, and GEORGE H. CRANDALL,  
Prosecuting Attorney of Spokane County, State  
of Washington,

*Appellees.*

---

APPEAL FROM THE DISTRICT COURT OF  
THE UNITED STATES FOR THE EAST-  
ERN DISTRICT OF WASHINGTON,  
NORTHERN DIVISION.

---

## Brief and Argument of Solicitors for Appellants

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SAMUEL H. PILES,  
EDWARD J. CANNON,  
GEORGE FERRIS, AND  
DALLAS V. HALVERSTADT,  
*Solicitors for Appellants.*



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No. 273.

# Supreme Court of the United States

October Term, 1916.

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JOE ADAMS, *et al.*,

*Appellants,*

*vs.*

W. V. TANNER, Attorney General of the State of  
Washington, and GEORGE H. CRANDALL,  
Prosecuting Attorney of Spokane County, State  
of Washington,

*Appellees.*

---

APPEAL FROM THE DISTRICT COURT OF  
THE UNITED STATES FOR THE EAST-  
ERN DISTRICT OF WASHINGTON,  
NORTHERN DIVISION.

---

Brief and Argument of Solicitors  
for Appellants

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STATEMENT.

At the general election held in the State of  
Washington in November, 1914, the following Ini-  
tiative Measure No. 8 was enacted by the people:

“AN ACT to Prohibit the collection of fees  
for the securing of employment or furnishing



information leading thereto and fixing a penalty for violation thereof.

Be it enacted by the People of the State of Washington:

"Section 1. The welfare of the State of Washington depends on the welfare of its workers and demands that they be protected from conditions that result in their being liable to imposition and extortion.

"The State of Washington therefore exercising herein its police and sovereign power declares that the system of collecting fees from the workers for furnishing them with employment, or with information leading thereto, results frequently in their becoming the victims of imposition and extortion and is therefore detrimental to the welfare of the state.

"Section 2. It shall be unlawful for any employment agent, his representative, or any other person to demand or receive either directly or indirectly from any person seeking employment, or from any person on his or her behalf, any remuneration or fee whatsoever for furnishing him or her with employment or with information leading thereto.

"Section 3. For each and every violation of any of the provisions of this act the penalty shall be a fine or (of) not more than one hundred dollars and imprisonment for not more than thirty days."

For a number of years prior thereto, appellants in virtue of licenses granted by the City of Spokane were respectively engaged in conducting in that city lucrative employment agencies, and had by

reason of their activities, the reliable and extensive information which they had acquired, the honest and careful manner in which they had conducted these agencies, and the wide acquaintance which they had gained among the laboring people, secured the patronage of a large number of persons seeking work and information respecting the employment of labor and labor conditions in the State of Washington, and elsewhere, the details of which are fully set forth in the bill.

Appellees having announced that when the initiative became effective (December 3, 1914) it would be enforced as a valid law, and appellants arrested for each and every violation of the provisions thereof, suit was instituted in the District Court of the United States for the Eastern District of Washington, Northern Division, to enjoin appellees from enforcing the measure and have it declared unconstitutional and void. The suit was transferred by order of the court to the District Court of the United States sitting at Seattle. (Record p. 41.)

The bill set forth the number of years appellants had been engaged in the employment business, the value thereof to them, and that they were

operating under licenses granted by the City of Spokane pursuant to an ordinance of that city; that the business was, and at all times had been, carried on free from fraud, extortion, etc., the average charge made their patrons, and that the sole revenue derived from the business was from those seeking employment through their respective agencies. A copy of the Spokane ordinance is attached to and made a part of the complaint, and the initiative measure complained of is set out in full therein. It is charged that this measure is unconstitutional and void because it violates Section 1 of the 14th Amendment to, and Section 10 of Article I of, the Federal Constitution, for the reason, among others, that it deprives each of the appellants of their liberty and property without due process of law, and denies to each of them the equal protection of the law, abridges their privileges and immunities, and impairs the obligations of their respective contracts. It is further alleged that appellees had announced that they would enforce the measure as a valid law and compel appellants to comply therewith by arresting them on each occasion they violated any of the terms thereof, and as a result their respective businesses would be destroyed.

The prayer was for a preliminary and perpetual injunction restraining appellees from enforcing the act, and that it be declared unconstitutional and void upon the final hearing, upon the grounds set forth in the bill. (Record pp. 1-17.)

The bill was supported by the affidavits of a number of persons (Record pp. 21-38), showing the manner in which the business was conducted, the value thereof, the charges paid for finding employment ranging in some instances from fifty cents to a dollar and a half, and that the only income therefrom was derived from fees charged the workers; also, a letter from Henry S. Graves, Chief Forester of the United States, to Senator Poindexter, showing that the District Forester had employed a number of men through the private employment agencies at Spokane to fight fire in the government forests, and as such agencies had proved very satisfactory it undoubtedly would be necessary for him to resort to them in the future, as in the past, for assistance in serious emergencies, and that it was impracticable for the District Forester to promise Mr. Wheaton, the Municipal Labor Agent for the City of Spokane, that the Forester would depend entirely upon the municipal agency in the future.

Appellees moved to dismiss, because:

(a) The bill does not state facts sufficient to warrant the court in granting any relief to plaintiffs;

(b) Plaintiffs have a speedy and adequate remedy at law;

(c) The court has no jurisdiction of the persons of defendants, or either of them, or the subject matter of the action. (Record pp. 54-56.)

The application for a temporary injunction was heard by Circuit Judge Gilbert, and District Judges Neterer and Cushman, the two former holding the act to be a police regulation, and therefore within the police power of the state, whereupon the application was denied and the bill dismissed for want of equity. (Record pp. 57-68.) Judge Cushman held the act to be unconstitutional and void. (Record pp. 69-85.)

The jurisdiction of the court was invoked by reason of diversity of citizenship and the violation of the constitutional rights guaranteed appellant by the Federal Constitution.

## SPECIFICATIONS OF ERROR.

The order or decree denying a temporary injunction restraining appellees from instituting proceedings for the enforcement of Initiative Measure No. 8 of the State of Washington, entitled: "An Act to prohibit the collection of fees for the securing of employment or furnishing information leading thereto and fixing a penalty for violation thereof," adopted at the general election held in the State of Washington on the 3d day of November, 1914, the same being Chapter 1 of the Laws of the State of Washington for the year 1915, is erroneous, and the said initiative measure, which is a law of said state, is invalid because:

1. The said Initiative Measure No. 8 and the order or decree sustaining it, deprive each appellant of his liberty and property without due process of law, and deny to each of them the equal protection of the law, and abridge each of their privileges and immunities, also the privileges and immunities of all "workers" seeking their services, in violation of Section 1 of Article XIV of the Constitution of the United States, in that:

- (a) Each of the appellants is denied the liberty of contract, in that each thereof is prohibited

thereby from entering into contracts with person *sui juris* seeking employment through the medium of employment agencies whereby it may be agreed that such persons will pay a fee or make compensation in money or property in consideration of their being furnished employment through the efforts of such agency, and restricted in, if not deprived of, his natural right of making a living in a lawful manner;

(b) Each so-called "worker" in the State of Washington is prohibited thereby from entering into such contracts with any of the appellants; and his privilege of seeking and securing employment thereby limited and restricted;

(c) Each appellant is prohibited thereby from conducting a necessary, lawful and beneficial business, in a lawful manner in the State of Washington, and is arbitrarily deprived thereby of the privilege of earning a livelihood and from freely using his faculties in the prosecution of a lawful and beneficial business, calling or vocation;

(d) Each appellant is thereby denied the equal protection of the law in that said Initiative Measure No. 8 does not apply equally to all persons or lawful businesses, callings or vocations, nor is the



same a reasonable regulation of the business of employment agencies, but is an unnecessary, unreasonable, arbitrary, oppressive and discriminatory measure whereby each appellant is deprived of the natural and constitutional right of conducting and pursuing in a lawful manner, a necessary, lawful and beneficial business, calling or vocation in said state, while all other persons and corporations are allowed to conduct and pursue all other lawful and beneficial businesses, callings and vocations therein:

(e) Each appellant is thereby also denied the equal protection of the law in that each is prohibited from entering into contracts with "workers" with respect to a lawful, necessary and beneficial business, calling or vocation, while all other persons and corporations are left free to contract with "workers" with respect to all other lawful and beneficial businesses, vocations or callings therein;

(f) An arbitrary classification and discrimination is thereby created and enforced which is not based upon any lawful or just discrimination between appellants and others engaged in any other lawful business, vocation or calling, but said initiative singles out the employment agency business as a special subject for unreasonable, unjust, arbitrary, discriminatory and hostile legislation.

2. The said order is erroneous, and the said Initiative Measure No. 8 is invalid because said initiative measure is in contravention of the provisions of Section 10 of Article I of the Constitution of the United States, in that it impairs the obligations of the numerous contracts which each appellant had with numerous "workers" at and prior to the adoption of said initiative measure, under the terms of which it was and is agreed that each appellant shall receive the sum therein stipulated in consideration of his finding for, and furnishing employment to, each such "worker" with those requiring their services; and in that it impairs the obligations of the contracts existing at and prior to the adoption of said initiative measure between the said City of Spokane and each appellant to conduct his business therein for the time and pursuant to the terms and conditions of the contract stated in paragraph 8 of appellants' bill of complaint and Exhibit "A" thereunto attached. (Record pp. 7-14.)

## ARGUMENT.

## I.

THE LOWER COURT HAD JURISDICTION IN THE  
PREMISES.

*Rast vs. Van Deman*, 240 U. S. 342;  
*Siler vs. L. & N. R. R. Co.*, 213 U. S. 175, 191;  
*L. & N. R. R. Co. vs. Garrett*, 231 U. S. 298;  
*Truax vs. Raich*, 239 U. S. 33.

Appellants position, briefly stated, is that the  
act under consideration is void:

(1) Because it attempts to prohibit a lawful  
and beneficial business.

(2) Because it attempts to deprive persons  
*sui juris* of the liberty of contract and abridges  
their privileges and immunities, also those of all  
“workers” seeking their services in the procurement  
of employment.

(3) Because it deprives appellants of their  
property, and of the right to use their faculties,  
and to make their living in pursuing a lawful and  
beneficial business, vocation or calling.

(4) Because it deprives appellants of the  
equal protection of the law in that it does not apply  
equally to all persons, businesses, vocations or call-

ings, similarly situated, and is not a valid exercise of the police power even though it should be held to be a regulation instead of an absolute prohibition of the employment agency business in that it is an unnecessary, unreasonable, arbitrary and oppressive regulation of employment agencies—all in violation of Section 1 of the 14th Amendment to the Federal Constitution.

(5) Because it impairs the obligations of contracts existing between appellants and workers, and appellants and the City of Spokane, at and prior to the passage of said initiative, in violation of Section 10 of Article I of the Federal Constitution.

In *Muller vs. Oregon*, 208 U. S. 412, the late Mr. Justice Brewer, at page 419, said, in speaking of legislatures regulating the hours of labor prescribed for females:

“In patent cases counsel are apt to open the argument with a discussion of the state of the art. It may not be amiss, in the present case, before examining the constitutional question, to notice the course of legislation, as well as expressions of opinion from other than judicial sources.”

It will not be improper, therefore, for us to note what public officials think of the employment business which the legislative power of the State of

Washington seeks to prohibit, or if not to prohibit to practically destroy.

In Bulletin No. 109, issued by United States Bureau of Labor, October 15th, 1912, Mr. Charles P. Neill, then Commissioner, at page 37 says:

“With proper regulation, private employment offices are of great service to the public, and where free offices do not exist they may be regarded as a necessity. It is probable that in discussions relating to private agencies too much emphasis has been laid upon the evil practices of unprincipled agents, *and too little upon the service rendered by the properly conducted bureau.* Until public employment agencies have developed to a far greater usefulness than at present, and until much more money is appropriated for their extension and support, the private agency will continue to fill a need and to charge for its services. *To legislate such offices out of existence, as has sometimes been proposed, would be disastrous,* and to hope to drive them out of business by the competition of free public offices is, for the present at least, unwarranted.” (Italics ours.)

In the February 17, 1915, issue of the Outlook, at page 394, appears an article by the Hon. Wm. B. Wilson, the present Secretary of Labor, in which, at page 397, he says:

“In consideration of agencies for the distribution of labor it must be remembered that such agencies deal with one phase, but only one phase, of the unemployment problem. If men

are out of work because no work is available, such agencies are of no value. Likewise, if wage-earners are idle because they are either unwilling or unable to work, an employment office can accomplish nothing. Again, if unskilled men are idle when skilled men only are wanted, there is not place for any employment bureau. If, however, men with certain qualifications are idle at a time when employers are seeking men with those same qualifications, then an employment agency can be of service. This most obvious limitation upon the usefulness of employment bureaus is important. Much of the criticism to which these agencies, particularly free public agencies, are subjected is due to a failure to recognize the limits of their usefulness. They cannot make work, and they cannot give workmen energy or ability. They can serve the public only when the condition of the labor market permits them to do so.

“Within the field thus defined employment offices have a great opportunity for usefulness. An employer in need of help cannot know what particular man is idle or in want of work. The unemployed workman cannot know which one of thousand employers needs his services. To bring these two persons together is the province of any employment agent, and whether his office is maintained by a charitable society, or operated for gain, if he accomplishes his purpose expeditiously and satisfactorily he has performed a valuable service.

*“In the benefit accruing to both parties through the intermediation of an employment agency may be seen the justification for the commercialized agency, which charges a fee. In the effect upon the character of the workman, as*

well as the material benefit to him, and his family, is found the argument for the philanthropic agency. And in the advantage accruing to the public through a lessening of unemployment is the justification for free public bureaus." (Italics ours.)

In the April, 1915, issue of the Century Magazine, at page 843, appears an article, entitled: "Unemployment, a Problem and a Program," by Frederick C. Howe, present Commissioner of Immigration, in which he, at page 846, says:

"The employment agency does not create work where no work exists. It is not a complete solution of the unemployment problem, it cannot cope with the efforts of severe industrial depressions; but it does put the jobless man in the manless job with the minimum loss of time to the employer and the employee. It performs a sifting process by which the right man gets into the right place."

In *Spokane vs. Macho*, 51 Wash. 322, it is said by the Supreme Court of the State of Washington, in considering legislation affecting the employment business:

"It cannot be denied that the business of the employment agent is a legitimate business, as much so as that of a banker, broker or merchant; and under the methods prevailing in the modern business world it may be said to be a necessary adjunct in the prosecution of a business enterprise."



Likewise, the Supreme Court of California, in the case of *Ex Parte Dickey*, 144 Cal. 234, 66 L. R. A. 928, said:

“The business in which this defendant is engaged is not only innocent and innocuous, but is highly beneficial, as tending the more quickly to secure labor for the unemployed. There is nothing in the nature of the business, therefore, that in any way threatens or endangers the public health, safety or morals. \* \* \* Here, then, is laid down a most drastic rule governing the conduct of a man in the prosecution of a harmless, legitimate and beneficial business.”

In the dissenting opinion filed by Judge Cushman, in *Wiseman vs. Tanner*, 221 Fed. 694, at page 705, it is said:

“First, the business, as established and carried on, is one for the sale of labor, or to find a sale for labor, and not to buy it. Labor differs from other commodities in this: The laborer may, on opportunity, sell his own labor; but, necessarily, busied with his toil in a complex commercial system such as ours, his opportunity is poor compared with that of an experienced and established agency engaged in the business of finding opportunities for employment. \* \* \* There has been no contention nor holding that there is aught save good in any employment agency honestly conducted. Upon consideration, it will be conceded that few callings could be more worthy than finding honest employment, and, thereby, honest independence for a man who wants to work and who cannot find the opportunity. An agency not

inherently harmful, which secures labor for the unemployed is beneficial.”

It will thus be seen that those who have given serious thought to the subject are of the opinion, which is self-evident, that well regulated employment agencies add greatly to the welfare of the human family. Constantly there are found a number of advertisements in papers and magazines soliciting individuals to enter into contracts with the conductors of schools of correspondence that they may be educated as bookkeepers, typewriters, stenographers, mechanics, etc., and offering to find employment for those so contracting with them. It is possible that some of these schools, like other places where labor is employed, perpetrate frauds upon their patrons, but who will deny the right of persons *sui juris* to contract with respect to such education and employment? Who will deny that if the legislation under consideration is a valid exercise of the police power, that an act prohibiting individuals from entering into contracts with respect to their education, securing employment and generally the acquisition of mechanical skill in such schools, could not likewise be prohibited?

Idleness is discouraged for well known reasons, and any honestly conducted agency which finds em-

ployment for the unemployed renders not only a beneficial private service but a beneficial public service, and should be encouraged instead of prohibited.

## II.

### THE INITIATIVE IS PROHIBITION, NOT REGULATION, OF EMPLOYMENT AGENCIES.

The statute requires the secretary of state, on the filing of an initiative petition, to give it a ballot title and to publish a pamphlet containing the proposed initiative with the official arguments for and against the same, and mail such publication to the voters sixty days before the election at which the initiative is to be voted upon. The title given the initiative in question, therefore, is not gratuitous, but official. In the pamphlet so issued by the secretary of state and mailed to the voters, pursuant to the statute, prior to the November, 1914, election, is found the following:

"An Act to be submitted to the legal voters of the State of Washington for their approval or rejection, at the General Election to be held on Tuesday, the third day of November, 1914, Proposed by Initiative Petition No. 8, filed in the office of the Secretary of State, July 3, 1914, commonly known as *Abolishing Employment Offices measure.*"

This clearly shows the purpose and intent of the initiative in question.

Furthermore, the second section of the initiative makes it unlawful for any employment agent, or any one in his behalf, to demand or receive, directly or indirectly, from any person seeking employment, or from any person in his behalf, *any remuneration or fee whatsoever for furnishing him or her with employment or with information leading thereto.* The penalty prescribed for the violation of the initiative is fine and imprisonment. It thus appears that an employment agent may not receive any compensation for securing employment for another party, or for furnishing him information leading thereto.

The character of an act is determined not by its theoretical, but by its natural and ordinary, effect. The form in which it is couched is a matter of no importance. The court is concerned with its substance. Speaking for this court, in the case of *Coppage vs. Kansas*, 236 U. S. 1, Mr. Justice Pitney said:

“But, when a party appeals to this court for the protection of rights secured to him by the Federal Constitution, the decision is not to depend upon the form of the state law, *nor even upon its declared purpose*, but rather upon its

operation and effect as applied and enforced by the state; and upon these matters this court cannot, in the proper performance of its duty, yield its judgment to that of the state court. *St. Louis-South Western R. Co. vs. Arkansas*, 235 U. S. 350, 362, ante, 99; 35 Sup. Ct. Rep. 99, and cases cited. Now, it seems to us clear that a statutory provision which is not a legitimate police regulation cannot be made such by being placed in the same act with a police regulation, *or by being enacted under a title that declares a purpose which would be a proper object for the existence of that power.* 'Its true character cannot be changed by its collocation,' as Mr. Justice Grier said in the *Passenger* cases, 7 How. 458; 12 L. Ed. 775." (Italics ours.)

In the case of *Mugler vs. Kansas*, 123 U. S. 623, 661, Mr. Justice Harlan said:

"The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority."

Again, in the case of *Lochner vs. N. Y.*, 198 U. S. 45, 64, the same court said:

"The purpose of a statute must be determined from the natural and legal effect of the language employed; and whether it is or is not repugnant to the Constitution of the United States must be determined from the natural effect of such statutes when put into operation,

and not from their proclaimed purpose. *Minnesota vs. Barber*, 136 U. S. 313, 34 L. Ed. 455, 3 Inter Com. Rep. 185, 10 Sup. Ct. Rep. 682; *Brimmer vs. Rebman*, 138 U. S. 78, 34 L. Ed. 862, 3 Inter. Com. Rep. 485, 11 Sup. Ct. Rep. 213. The court looks beyond the mere letter of the law in such cases. *Yick Wo vs. Hopkins*, 118 U. S. 356, L. Ed. 220, 6 Sup. Ct. Rep. 1064."

To the same effect is the decision of the Supreme Court of Wisconsin in the case of *State vs. Redmon*, 114 N. W. 137, 14 L. R. A. (N. S.) 229, 236. It follows then that this act must be considered in the light of the result which it actually accomplishes according to its terms, and that its form is a matter of no moment.

The effect of the initiative as applied to the men who for years engaged employment agents to secure positions for them is equally destructive. A large part of the industry carried on in this state is at points remote from the centers of population, and where information as to the labor market is not to be had. Every man has a constitutional right to labor, and to use his energies in finding employment for those who seek it. Every workman has a right to attempt to secure employment and to expend in his effort in that direction such time and money as he may desire. But, if this act be valid,

the employment agent and the workman are denied these rights, as they are expressly prohibited. The workman's right, therefore, to enlist the services of a third party in his laudable effort to avoid the necessity of becoming a public charge is confined to patronizing a benevolent agency—if he can find one. That failing, he must tramp the roads and streets, spend his time and money and remain idle until he happens to find something to do, when at the same time there may be many vacancies he could fill, if he knew where they were, and which he could ascertain, without loss of time, for \$1.50, but for the benevolent, protecting arm of government, interested only in his welfare, because anyone accepting any remuneration from him, for that purpose, must answer for his heinous offense against the laws of justice by delivering his worldly goods to the clerk, by way of a fine, and his body to the sheriff for incarceration.

Having deprived the employment agent of his army of customers, the only ones from whom he derived any revenue, it is said his business is not destroyed, and that he is not prohibited from making a living therein, because he may expend his time and money in an effort to induce employers of labor to make use in part of his services, and if

successful along those lines he may continue his business, limited though it may be. Considered as a regulation, the act is but a sham and pretense. Its natural and legal effect is to forbid a man from earning a living in a lawful business, and to destroy that business by doing exactly what it was intended should be done—suppress private employment agencies; for it will be noticed that the act does not provide for the licensing, bonding or regulation of employment agencies, or limit the amount of the fee that such agents may charge “workers,” or fix their liability in case they send men to places where no employment is to be had, or in any respect attempt to govern the business.

It is said that the workman’s constitutional rights have not been interfered with by the terms of the initiative, in that *he* is not prohibited from any act he may desire to do. This argument is made despite the fact that many men have for years been engaged in that business and desire now to continue therein, but are prevented by the appellees, assuming to act under authority of the state, and despite the fact that these men would aid him in securing employment but for the prohibition of the act. He, then, can assert no constitutional right because he can find no one who is willing to disobey



an act prescribing fine and imprisonment therefor. He faces two alternatives: He can spend the time necessary to find employment, spend what money he may have to support himself and his family in the meantime, or, if he fails to find employment, although it is to be had, he and his family have the gracious boon of becoming objects of charity. What a beneficial act! How conducive to the welfare of the laboring man! How calculated to build up the spirit, the courage and the self-respect of the honest laborer! And this we do and call it *regulation*.

The contention, however, is fallacious, for by prohibiting the agent from contracting with him, the "worker" is as effectually restrained from dealing with the agency as he would be had the measure provided that it should be unlawful for any "worker" to pay an employment agent a fee or other remuneration for securing work for him.

## III.

THE LEGISLATURE CANNOT PROHIBIT AN INHERENTLY  
LAWFUL BUSINESS.

Regulation and prohibition are not identical. While they depend for their existence upon the police power, regulation implies the existence of something to be regulated, while prohibition is the total or practical suppression of that at which it is directed. We need cite no authority to so fundamental a proposition as that the legislature cannot, by any power which it has, inhibit *every* business, calling, occupation, or means of livelihood. That being true, there must be a clear line of demarcation between the extent of the power of regulation and of prohibition. The limitation is easily found. The power to forbid depends upon the inherent character of that at which it is directed, leaving out of consideration the character of some men who may be engaged in it. We must omit from consideration the character of some who may engage in it, because of the well known fact that dishonest men infest every calling known to man, and because otherwise a few dishonest individuals could force the prohibition of *all* lawful occupations to *all honest* men.

In the case of *Frisbie vs. United States*, 157 U. S. 160, 166, this court sustained an act prohibiting any one from demanding or receiving more than \$10.00 for his services in prosecuting a claim for a pension. The court called attention to the fact that a pension was merely a bounty from the government, which it had a right to grant or withhold as it chose, and that if it granted the same it could attach such conditions to the grant as it desired. In speaking of the police power, the court said:

“The possession of this power of government in no manner conflicts with the proposition that, generally speaking, every citizen has a right to contract for the price of his labor, services or property.”

In the case of *W. W. Cargill Co. vs. Minnesota*, 180 U. S. 452, 468, the court upheld the constitutionality of an act requiring a license to operate a warehouse in the State of Minnesota. In its opinion the court said:

“We cannot question the power of the state, so far as the Constitution of the United States is concerned, to require a license *for the privilege of carrying on business of that character* within its limits—*such license not being required for the purpose of forbidding a business lawful or harmless in itself, but only for the purpose of regulation.*” (Italics ours.)

In the case of *Brazee vs. Michigan*, 241 U. S.

340, the court held that the state might require licenses for employment agencies, and prescribed reasonable regulations in respect of them.

In the case of *Murphy vs. California*, 225 U. S. 623, 628, the court upheld an ordinance prohibiting the keeping of billiard or pool tables for hire or public use, except in connection with hotels having twenty-five rooms or more, and then only for use of guests, and in so doing said:

“The 14th Amendment protects the citizen in his right to engage in any *lawful business*, but it does not prevent legislation intended to *regulate useful* occupations which, because of their nature or location, may prove injurious or offensive to the public. Neither does it prevent a municipality from *prohibiting any business* which is *inherently vicious and harmful*. But, between the *useful* business which may be *regulated* and the *vicious* business which can be *prohibited* lie many non-useful occupations which may or may not be harmful to the public, according to local conditions, or the manner in which they are conducted.” (Italics ours.)

In the case of *Smith vs. Texas*, 233 U. S. 630, 636, the court held unconstitutional an act of Texas making it a misdemeanor for any person to act as a conductor on a railway train in that state without having previously served for two years as a freight conductor or brakeman. In so doing the court said:

“Liberty means more than freedom from servitude, and the constitutional guarantee is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling.”

In the case of *Merrick vs. Halsey & Co.*, decided by this court January 22, 1917, it was urged that the Blue Sky law, there under consideration, was a prohibition of the business and was, for that reason, invalid; but this court held that it was not a prohibition, thereby impliedly, we believe, recognizing the doctrine that a lawful business cannot be prohibited. Likewise, in *State vs. Rossman*, 51 Wash. Dec. 359, the Supreme Court of the State of Washington, considering a similar argument against the initiative in question here, also recognized the same doctrine by holding that the initiative was not a prohibition of the business.

Mr. Tiedemann in his work on Police Power (p. 290) says:

“In order to prohibit the prosecution of a trade altogether, the injury to the public, which furnishes the justification for such a law, must proceed from the *inherent character of the business*. \* \* \* But if the business is not *inherently harmful* the prosecution of it cannot rightfully be prohibited to one who will conduct the business in a proper and circumspect manner. Such an one would be ‘deprived of

his liberty' without due process of law." (Italics ours.)

In the case of *State vs. Moore* (N. C.), 22 L. R. A. 472, 474, involving the validity of an act imposing a license fee of \$1,000.00 upon all persons engaging in the emigrant business, the court called attention to the fact that liberty included the right of every citizen to follow any of the ordinary callings of life, to earn his livelihood by any lawful means, and to follow any lawful calling, citing authority to that effect, and then said:

"These authorities are referred to for the purpose of showing that, under the mere guise of a police regulation, a person cannot be unduly restricted, or *substantially prohibited*, from pursuing a *lawful* occupation. *In order to justify such legislation, the business must itself be of such a nature that its prosecution will do damage to the public, whatever may be the character and qualifications of those who engage in it.* Mr. Tiedman, in his very reliable work (Pol. Powers, p. 290), remarks: 'In order to prohibit the prosecution of a trade altogether, the injury to the public, which furnishes the justification for such a law, must proceed from the *inherent character of the business.*' \* \* \* But, if the business is not *inherently harmful* the prosecution of it cannot rightfully be prohibited to one who will conduct the business in a proper and circumspect manner. Such an one would be "deprived of his liberty" without due process of law.' It is on the ground of the *inherently harmful and dan-*

*gerous character* that the keeping of gaming tables or the selling of intoxicating liquor, or other things of a demoralizing nature, may be absolutely prohibited. *Mugler vs. Kansas*, 123 U. S. 623, 31 L. Ed. 2-5; *State vs. Joyner*, 81 N. C. 534. This may be, and is often, directly accomplished by legislation, which, in its terms, is expressly prohibitory, instead of the circuitous method of imposing a burden in the nature of a license as a police regulation, which is difficult or impossible to be borne, and which, in the end, may make the occupation unprofitable. Cooley, Taxn. 404." (Italics ours.)

The emigrant business is the employment business limited to securing positions without the state. In holding that the business could not be prohibited, the court said:

"The general scope and tendency of the act, in connection with the exaction of the very large license fee, induce us to believe that, viewed as a police regulation, it is so far restrictive and prohibitory as to contravene those fundamental principles we have enunciated, and which are intended to protect the citizen in the pursuit of an occupation not inherently dangerous or harmful to the public. *It may be regulated but it cannot be indirectly prohibited, by an exercise of the police power.*" (Italics ours.)

In the case of *State vs. Brown*, 37 Wash. 97, 103, the court held void a statute prohibiting any one from conducting or operating a dental office unless he held a license to practice dentistry, and

that case affirmed the doctrine which we advocate.

In the case of *State ex rel. Davis-Smith Co. vs. Clausen*, 65 Wash. 156, 190, that court again recognized the same principle as follows:

“Nor is it sufficient to exclude the industries mentioned in the act before us from the operation of these principles to say that they are *lawful callings, not subject to absolute prohibition.*” (Italics ours.)

In *McCray vs. United States*, 195 U. S. 27, the court upheld an act of Congress imposing a tax of *ten cents a pound* upon artificially colored oleomargarine. It was contended that the tax was prohibitive of the business. The court said that whether it was or was not made no difference because the legislature could *prohibit* the manufacture of artificially colored oleomargarine because of its *inherently* deceptive character. The court then said:

“As we have said, it has been conclusively settled by this court that the *tendency* of that article to deceive the public into buying it for butter is such that the states may, in the exertion of their police powers, without violating the due process clause of the 14th Amendment, absolutely *prohibit* the manufacture of the article. It hence results, that, even although it be true that the effect of the tax in question is to repress the manufacture of artificially colored oleomargarine, it cannot be said that such repression destroys rights which no free



government could destroy, and, therefore, no ground exists to sustain the proposition that the judiciary may invoke an implied prohibition, upon the theory that to do so is essential to save such rights from destruction." (Italics ours.)

In *Hammond Packing Co. vs. Montana*, 233 U. S. 331, the court upheld a license tax of one cent per pound sold for carrying on the business of selling oleomargarine. In discussing the police power of the state, the court said:

"It (the state) may express and carry out its policy as well in a *revenue* as in a *police* power law." (Italics ours.)

Again, bearing in mind the two decisions last cited, why cannot the state enact a railroad rate so low that it would yield no income on the investment, if the inherent character of the business is not the test? Yet courts unanimously hold that the state has no such power. Why cannot the legislature enact a stockyard rate so low as to yield no return on the investment, if it be not because of the inherent character of the business? Why, in the case of every public service corporation, do the courts unanimously hold that the rates fixed by the state must be such as to yield a reasonable return on the property necessarily used in the prosecution of the

business, if it be not the inherent character of the business?

In *Murphy vs. California*, 225 U. S. 623, 628, the court said:

"The 14th Amendment protects the citizen in his right to engage in any *lawful* business, but it does not prevent legislation intended to *regulate* useful occupations which, because of their nature or location, may prove injurious or offensive to the public. Neither does it prevent a municipality from prohibiting any business which is *inherently vicious and harmful*. But between the *useful* business which may be *regulated*, and the *vicious* business which can be *prohibited*, lie many non-useful occupations which may or may not be harmful to the public, according to local conditions, or the manner in which they are conducted." (Italics ours.)

This court in that case said as plainly as words can express, that a *lawful* business was subject to *regulation* but not *prohibition*; that it was a *vicious* business which might be *prohibited*, and that the *useful* business could only be *regulated*. This distinction must follow because of the paralyzing effect of any decision to the contrary. If it be not true, then property and property rights are subject, and subject only, to the passage of legislative acts. This is not stating the case too strongly, because some dishonest men have engaged in every form of busi-

ness known to civilization, and, therefore, every form of business and business activity would be subject to the absolute power of the will of the mob, with the result that there would not, and could not, be such a conception as a constitutional right, nor would there, nor could there, be constitutional limitations. We are not yet ready to admit that our jurisprudence permits this result.

The question of the power of the legislature to prohibit employment agencies in this state was thought to be set at rest for all time by the decision of the Supreme Court of the State of Washington in the case of *Spokane vs. Macho*, 51 Wash. 322. That case was an appeal from a judgment of conviction of violation of section 7 of an ordinance adopted by the City of Spokane, in the following terms:

“Sec. 7. It shall be unlawful for any person keeping an employment office to make any wilful misrepresentations to any person seeking employment through such office, or to wilfully deceive any person seeking employment through such office, and take a fee for such employment.”

The charter provisions relied upon to sustain the prosecution were as follows:

“Sec. 53. To regulate or *prohibit* the carrying on within the corporate limits of the

city, of occupations which are of such a nature as to disturb the public health or *good order* of the city, or to disturb the public peace, and which are not prohibited by law; and to provide for all punishments," etc.

"Sec. 55. To provide for the punishment of all disorderly conduct and of all practices dangerous to the public safety or health, and to make all regulations necessary for the preservation of public morality, health, peace, and *good order*," etc. (Page 323.) (Italics ours.) The court said:

"It cannot be denied that the business of the employment agent is a legitimate business, as much so as is that of the banker, broker, or merchant; and under the methods prevailing in the modern business world, it may be said to be a necessary adjunct in the prosecution of business enterprise."

The court then considered and upheld a contention that the section of the ordinance under discussion violated the equal protection of the law, and concluded as follows:

"The only question open under section 7 is whether, in the exercise of its *authority*, the city has gone beyond the reasonable and *constitutional limit of police regulation*. We decide that it has done so."

The court will observe that, by the first of the charter provisions above quoted, the city had the power to *prohibit* the carrying on of any occupa-

tion of such a nature as to *affect the good order* of the city, and, by the second charter provision, to make all regulations necessary for the preservation of the public morality, health, peace and *good order*. This is precisely the power of the state which is invoked to support the prohibition of the employment business in this case. Now, if a business can constitutionally be prohibited, it is immaterial whether the act is a direct prohibition, or any indirect prohibition in the form of a tax, license, or other regulation which may make the business impossible. The state may attack it in any way it deems wise. No one may complain, because the business is such that the state may totally suppress it, or may permit it to be carried on under such conditions, *whatever they are*, as it may choose.

*McCray vs. U. S.* (*supra*), 195 U. S. 27.

*Hammond Packing Co. vs. Montana* (*supra*),  
233 U. S. 331.

*Cooley, Taxation*, 404.

## IV.

INITIATIVE MEASURE NO. 8, AND THE ORDER OR DECREE SUSTAINING IT, FORBID THE LIBERTY OF CONTRACT, DEPRIVE APPELLANTS OF PROPERTY WITHOUT DUE PROCESS OF LAW, INFRINGE THEIR PRIVILEGES AND IMMUNITIES AND THOSE OF THE SO-CALLED WORKERS AND DEPRIVE APPELLANTS OF THE EQUAL PROTECTION OF THE LAW, IN VIOLATION OF THE 14TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

This court has at all times held that every man has a constitutional right to carry on any lawful business and to labor at a lawful calling or occupation, and that no form of legislation could abridge that right. In the case of *Butchers' Union, etc., vs. Crescent City, etc., Co.*, 111 U. S. 746 (762, 764), Mr. Justice Bradley, Mr. Justice Wood and Mr. Justice Harlan, in a concurring opinion say:

"The right to follow any of the common occupations of life is an inalienable right; it was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence, which commenced with the fundamental proposition that 'All men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.' This right is a large ingredient in the civil liberty of the citizen."

"I hold that the liberty of pursuit, the right to follow any of the ordinary callings of life, is one of the privileges of a citizen of the United States."

In the case of *Powell vs. Pennsylvania*, 127 U. S. 678, the court said:

"The main proposition advanced by the defendant is that his enjoyment upon terms of equality with all others in similar circumstances of the privilege of pursuing an ordinary calling or trade, and of acquiring, holding, and selling property, is an essential part of his rights of liberty and property, as guaranteed by the Fourteenth Amendment. The court assents to this general proposition as embodying a sound principle of constitutional law."

In the case of *Dent vs. West Virginia*, 129 U. S. 114, 121, the court said:

"It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex and condition. This right may in many respects be considered as a distinguishing feature of our republican institutions. Here all vocations are open to everyone on like conditions. All may be pursued as sources of livelihood, some requiring years of study and great learning for their successful prosecution. The interest, or, as it is sometimes termed, the estate acquired in them—that is, the right to continue their prosecution, is often of great value to the possessors, and cannot be arbitrarily taken from them, any

more than their real or personal property can thus be taken."

In the case of *Allgeyer vs. Louisiana*, 165 U. S. 578, 579, the court said:

"The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; *to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation*, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned." (Italics ours.)

In the case of *Holden vs. Hardy*, 169 U. S. 366, 391, the court said:

"As the possession of property, of which a person cannot be deprived, doubtless implies that such property may be acquired, it is safe to say that a state law, which undertakes to deprive any class of persons of the general power to acquire property, would also be obnoxious to the same provision. Indeed, we may go a step further, and say that as property can only be legally acquired as between living persons by contract, that a general prohibition against entering into contracts with respect to property, or having as their object the acquisition of property, would be equally invalid."



In the case of *Williams vs. Fears*, 179 U. S. 270, 274, the court had under consideration the employment business. In that connection it said:

“And so as to the right to contract. The liberty of which the deprivations without due process of law is forbidden, ‘means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; *to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned; \* \* \** although it may be conceded that this right to contract in relation to persons or property or to do business within the jurisdiction of the state may be regulated and sometimes prohibited when the contracts or business conflict with the policy of the state as contained in its statutes. *Allgeyer vs. Louisiana*, 165 U. S. 589, 591, 41 L. Ed. 835, 836, 17 Sup. Ct. Rep. 427; *Holden vs. Hardy*, 169 U. S. 366, 42 L. Ed. 780, 18 Sup. Ct. Rep. 383.” (Italics ours.)

In the case of *Lochner vs. New York*, 198 U. S. 45, the court held unconstitutional a statute of New York fixing the hours of labor for bakers. In the course of the opinion the court said:

“The statute necessarily interferes with the right of contract between the employer and

employees, concerning the number of hours in which the latter may labor in the bakery of the employer. The general right to make a contract in relation to his business is part of the liberty of the individual protected by the 14th Amendment of the Federal Constitution. *Allgeyer vs. Louisiana*, 165 U. S. 578, 41 L. Ed. 17, Sup. Ct. Rep. 427."

In the case of *Adair vs. United States*, 208 U. S. 161, the court said:

"The right of a person to sell his labor upon such terms as he deems proper is, in its essence the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering it."

In the case of *Smith vs. Texas*, 233 U. S. 630, the court said:

"Life, liberty, property, and the equal protection of the law, grouped together in the Constitution, are so related that the deprivation of any one of those separate and independent rights may lessen or extinguish the value of the other three. *In so far as a man is deprived of the right to labor, his liberty is restricted, his capacity to earn wages, and acquire property is lessened, and he is denied the protection which the law affords those who are permitted to work. Liberty means more than freedom from servitude, and the constitutional guaranty is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling.*" (Italics ours.)

The rule announced by this court in its numerous decisions treating with the questions at issue in the instant case is clearly and forcibly adhered to in *In re Dickey*, 144 Calif. 234, 66 L. R. A. 928.

In *Coppage vs. Kansas*, 236 U. S. 1, the court had under consideration an act of the legislature of Kansas forbidding employers to exact a promise not to join or retain membership in a labor organization as a condition of securing or retaining employment, and in the course of the opinion the court said:

“Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property. *Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense.* The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no honest way to acquire property, save by working for money. \* \* \*

\* \* \* But, in this case, the Kansas court of last resort has held that Coppage, the plaintiff in error, is a criminal, punishable with fine or imprisonment under this statute, simply and merely because, *while acting as the representative of the railroad company, and dealing with*

*Hedges, an employe at will and a man of full age and understanding, subject to no restraint or disability,* Coppage insisted that Hedges should freely choose whether he would leave the employ of the company or would agree to refrain from association with the union while so employed." (Italics ours.)

The act abridges the privileges and immunities of both the employment agent and the worker. It was manifestly intended to restrict, if not to deprive, the agent of the natural right of making his living in a lawful and beneficial business or calling. It restricts the right of the worker to seek employment and thereby advance his opportunities to earn a living through the medium of a lawful and beneficial agency which he had theretofore made frequent use of in his pursuit of liberty and happiness.

The right to labor is, of all others, after the right to live, the fundamental, inalienable right of man wherever he may be and of which he cannot be constitutionally deprived, and to restrict or abridge his natural right to labor in any lawful calling is to deprive him of an inalienable right recognized by all civilized governments. To deprive a man of the right to select and follow any lawful occupation—that is, to labor or to contract to labor,

if he so desires and can find employment—is not only to deprive him of the privileges and immunities guaranteed to him by the Constitution of the United States, but to deprive him of both liberty and property within the meaning of the 14th Amendment.

If the purpose of an act must be found in its natural operation and effect (*Henderson vs. New York* [*Henderson vs. Wickham*], 92 U. S. 259; *Bailey vs. Alabama*, 219 U. S. 219), it is apparent that the act under consideration was designed for the purpose of abridging the privileges and immunities of both the employment agent and the worker; to deny to each the equal protection of the law, and to unreasonably, unnecessarily, arbitrarily and oppressively discriminate against the appellants in their right to pursue a lawful calling in an effort to earn a livelihood and acquire property.

In *Truax vs. Raich*, 239 U. S. 33, under the initiative provision of the Constitution of Arizona, an act was adopted to protect the citizens of the United States in their employment against non-citizens of the United States in Arizona, and to provide penalties and punishments for the viola-

tions thereof. In speaking of the measure, the court said:

“It is sought to justify this act as an exercise of the power of the state to make reasonable classification in legislating to promote the health, safety, morals and welfare of those within its jurisdiction. But this admitted authority, with the broad range of legislative discretion that it implies, does not go so far as to make it possible for the state to deny to lawful inhabitants, because of their race or nationality, the ordinary means of earning a livelihood. *It requires no argument to show that the right to work for a living in the common occupations of the community, is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure.*” (Italics ours.)

The equal protection of the law is denied because the attempted classification is purely arbitrary. All persons other than those engaged in the useful business that appellants were conducting, are permitted to operate all other similar useful and beneficial businesses.

The employment business being lawful and inherently beneficial, it may not be prohibited, either directly or indirectly. The act, by making it criminal for appellants to enter into contracts with workers to find them employment for a compensation is at least an indirect prohibition of the

business; for it is certain that the business cannot be continued where the thousands who seek its services are prohibited from making compensation for the service which the agency performs.

As the Federal Constitution guarantees to every citizen the right "to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to persue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned,"—the act under consideration manifestly violates section 1 of the Fourteenth Amendment.

In *Connolly vs. Union Sewer Pipe Co.*, 184 U. S. 540, it is said:

"No right granted or secured by the Constitution of the United States can be impaired or destroyed by a state enactment, whatever may be the source from which the power to pass such enactment may have ben derived.  
\* \* \* The state has undoubtedly the power, by appropriate legislation, to protect the public morals, the public health, and the public safety; but if, by their necessary operation, *its regulations looking to either of those ends amount to a denial to persons within its jurisdiction of the equal protection of the laws, they must be*

*deemed unconstitutional and void.*" (Italics ours.)

The doctrine announced by this court has been followed by the Supreme Court of the State of Washington in the following cases:

*In re Aubrey*, 36 Wash. 308, 317.

*State ex rel. Ritchey vs. Smith*, 42 Wash. 237, 247.

*State ex rel. Mackintosh vs. Rossman*, 53 Wash. 1.

In the case of *In re O'Neil*, 41 Wash. 174, 184, it is said:

"Every one has a natural and constitutional right to pursue a lawful business."

In the case of *Jones vs. Leslie*, 61 Wash. 107, it is said:

"Is then, the right of employment in a laboring man property? That it is we think cannot be questioned. The property of the capitalist is his gold and silver, his bonds, credit, etc., for in these he deals and makes his living. For the same reason, the property of the merchant is his goods. *And every man's trade or profession is his property*, because it is his means of livelihood; because, through its agency, he maintains himself and family, and is enabled to add his share towards the expenses of maintaining the government. *Can it be said, with any degree of sense or justice, that the property which a man has in his labor, which is the foundation of all property and which is*



*the only capital of so large a majority of the citizens of our country, is not property; or, at least, not that character of property which can demand the boon of protection from the government? We think not. To destroy this property, or to prevent one from contracting it or exchanging it for the necessities of life, is not only an invasion of a private right, but is an injury to the public, for it tends to produce pauperism and crime."* (Italics ours.)

When all these courts have affirmed the right of every man to use his faculties in all "lawful" ways, to work and earn his livelihood at any "lawful" calling, it is readily apparent that the court did not use the term "lawful" in the sense of the absence of any prohibitory statute, but in the sense of being "inherently lawful;" otherwise, constitutional questions would be determined by a counting of the ballots, or the result of an investigation of the question whether the legislative machinery had properly operated. This must be true on fundamental principles, as otherwise no such constitutional right has any guaranty whatsoever, except the will of the majority of the legislature. Consequently, whether this act is valid depends upon the inherent character of the employment business, irrespective of the character of any of the men who may be engaged in it.

There is no question that the employment business is lawful and beneficial, and that every one has a right to earn his living in any lawful and useful calling. In view, therefore, of the statement of this court in *Lochner vs. New York*, 198 U. S. 45, that "The general right to make a contract in relation to his business is part of the liberty of the individual protected by the 14th Amendment," and of that set forth in *Williams vs. Fears*, 179 U. S. 270 (274), that the liberty referred to in the 14th Amendment means that a citizen has the right to be "free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling"—it follows that the measure in question is an attempt to arbitrarily deny the employment agent and the so-called "worker," first, the right to contract with respect to such business; second, the right to earn a living in a lawful calling and to be free in the use of all his faculties, and, third, the equal protection of the law, and, therefore, results in depriving appellants of their property without due process of law.

The prohibition against charging fees to workers, considered as a tax or license, is so excessive as to amount to a practicable prohibition of the busi-

ness, and must therefore fail. And so considered it denies appellants of liberty and property and deprives them of the equal protection of the law.

## V.

CONSIDERED AS A REGULATION, INITIATIVE MEASURE No. 8 IS UNREASONABLE, UNNECESSARY, ARBITRARY, AND OPPRESSIVE, AND AN UNJUST DISCRIMINATION IN VIOLATION OF THE 14TH AMENDMENT TO THE FEDERAL CONSTITUTION.

Assuming for the sake of argument that Initiative Measure No. 8 is an attempt to regulate the employment business, such so-called regulation cannot be upheld under the police power. The act does not undertake to regulate the business. It attempts to suppress it by prohibiting certain persons perfectly competent under the law to contract, from contracting. Employment agencies are absolutely prohibited from asking or receiving, directly or indirectly, any fee, compensation or remuneration whatever from those seeking employment. The case is, therefore, much stronger than those cases which deal with the legislative power to fix fees for services rendered. If, therefore, the right to regulate the charges or fees which may be made and collected by an employment

agency does not exist, or the lawmaking power has not the constitutional right to *forbid the agent and the individual from contracting in respect of a lawful and beneficial service*, then the act must fall even though it be treated as an attempted regulation of such business.

Frequently legislation has been enacted regulating charges in a purely private business, and fixing prices at which commodities may be sold in such business. These attempts have failed in every instance except one, which we shall hereafter mention. Indeed, it is axiomatic that the legislature has not the power to prescribe the charges which may be made for services rendered in a purely private business, nor to fix the price at which commodities may be sold, much less prohibit parties from contracting in respect of a lawful service.

*German Alliance Ins. Co. vs. Lewis*, 233 U. S. 389,

*Chesapeake & Potomac Telephone Co. vs. Manning*, 186 U. S. 238, 246,

*People vs. Steele*, 231 Ill. 370,

*Horney vs. Nixon*, 213 Pa. St. 20,

*State Ex Rel Star Publ. Co. vs. A. P.*, 159 Mo. 410,

*Opinions of Justices*, 163 Mass. 589,

*Low vs. Rees Printing Co.* (Neb.) 24 L. R. A. 702, 709,

*Ex Parte Quarg*, 149 Cal. 79, 5 L. R. A. (N. S.) 183, 185,

*W. Va. vs. Fire Creek Coal & Coke Co.*, 33 W. Va. 188, 10 S. E. 288, 6 L. R. A. 359,

*In Re Dickey*, 144 Cal. 234.

In the case of *German Alliance Ins. Co. vs. Lewis* (*supra*), 233 U. S. 389, the court had under consideration the constitutionality of an act of the legislature of Kansas, authorizing the superintendent of insurance to fix rates for fire insurance companies. In order to sustain the act the court found that the business was affected with a public interest. The considerations moving the court so to hold are expressed in the opinion as follows:

“A contract for fire insurance is one for indemnity against loss, and is personal. The admission, however, does not take us far in the solution of the question presented. Its personal character certainly does not of itself preclude regulation, for there are many examples of government regulation of personal contracts, and in the statutes of every state in the Union superintendence and control over the business of insurance are exercised, varying in details and extent. We need not particularize in detail. We need only say that there was quite early (in Massachusetts, 1837; New York, 1853) state provision for what is known as the unearned premium fund of reserve; then came

the limitation of dividends, the publishing of accounts, valued policies, standards of policies, prescribing investment, requiring deposits in money or bonds, confining the business to corporations, preventing discrimination in rates, limitation of risks, and other regulations equally restrictive. In other words, the state has stepped in and imposed conditions upon the companies, restraining the absolute liberty which businesses strictly private are permitted to exercise." \* \* \*

Counsel argued, however, that if the court sustained the act, it would be compelled to sustain similar legislation fixing the price of every article of human use. On that question the court said:

"But it is said that the reasoning of the opinion has the broad reach of subjecting to regulation every act of human endeavor and the price of every article of human use. We might, without much concern, leave our discussion to take care of itself against such misunderstanding or deductions."

In the case of *Chesapeake & Potomac Telephone Co. vs. Manning* (*supra*), 186 U. S. 238, 246, this court had under consideration an Act of Congress, regulating the rates of a telephone company in the District of Columbia. On the question under consideration here the court said:

"And we start with the proposition that it cannot be presumed that a legislature intends any interference with purely private business.

It cannot ordinarily prescribe what an individual or corporation, engaged in a purely private business, shall charge for services, and, therefore, *although the language of a statute may be broad enough to include such private business, it will generally be excepted therefrom in order to remove all doubts of the validity of the legislation. It appears that some portion of the defendant's business is of a purely private nature, the receipts whereof are spoken of in its reports as private rentals, and as to such business Congress could not, if it would prescribe what shall be charged therefor.* (Italics ours.)

In the case of *People vs. Steele (supra)*, 231 Ill. 340, 14 L. R. A. (N. S.) 361, 365, the Supreme Court of Illinois held unconstitutional an act prohibiting the sale of theater tickets at a price higher than that charged by the theater. In its opinion the court said:

“The legislature has the same authority over the theater business as over any other lawful private business, and no more.”

In the case of *Opinion of Justices (supra)*, 163 Mass. 589, on the question under consideration, the court said:

“The decisions of the various courts of this country upon the authority of the legislature of a state to prescribe rates for transportation by railroad companies and, in some instances, for the use of elevators, have proceeded on the ground that these were *public employ-*

*ments, and it is implied in all, or nearly all, of these decisions that the legislature could not constitutionally prescribe the rates of compensation to be paid for services or for the use of the property in exclusively private employments.'"*

In the case of *Low vs. Rees Printing Co.* (*supra*), 24 L. R. A. 709, the court held unconstitutional an act of the legislature limiting hours of work generally to eight hours in any one day. In holding the act void the court said:

"Property, in its broader sense, is not the physical thing which may be the subject of ownership, but is the right of dominion possession, and power of disposition which may be acquired over it; and the right of property preserved by the constitution is the right, not only to possess and enjoy it, *but to acquire it in any lawful mode, or by following any lawful industrial pursuit which the citizen, in the exercise of the liberty guaranteed, may choose to adopt.* Labor is the primary foundation of all wealth. The property which each one has in his own labor is the common heritage. *And, as an incident to the right of acquiring property, the liberty to enter into contracts by which labor may be employed in such way as to the laborer may seem most beneficial, and of others to employ such labor, is necessarily included in the constitutional guaranty.* \* \* \* We need not extend this opinion by further discussion. The right to contract necessarily includes the right to fix the price at which labor shall be performed."



In *Ex Parte Quarg* (*supra*), 149 Cal. 79, 5 L. R. A. (N. S.) 183, 185, the Supreme Court of California held void an act prohibiting the sale of theater tickets at a price higher than that charged by the theater.

In the case of *W. Va. vs. Fire Creek Coal & Coke Co.*, 33 W. Va. 188, 10 S. E. 288, 6 L. R. A. 359, the Supreme Court of West Virginia held void an act limiting the profits on sales by manufacturing and mining companies to their employees.

In the case of *In Re Dickey* (*supra*), 144 Cal. 234, 66 L. R. A. 928, the Supreme Court of California held unconstitutional a statute limiting the charges which the owner of an employment agency might make for his services, and in so doing said:

“As to the scope of the legislative exercise of the police power the Supreme Court of the United States, in the recent case of *Holden vs. Hardy*, 169 U. S. 366, 42 L. ed. 780, 18 Sup. Ct. Rep. 383, discussing the question of the right of one to pursue an ordinary and legitimate vocation, to acquire property, and to make contracts to that end, says: ‘This right of contract, however, is itself subject to certain limitations which the state may lawfully impose in the exercise of its police powers. While this power is inherent in all governments, it has doubtless been greatly expanded in its application during the past century, owing to an enormous increase in the number of occupa-

tions which are dangerous, or so far detrimental to the health of employees as to demand special precautions for their well-being and protection, or the safety of adjacent property. While this court held \* \* \* that the police power cannot be put forward as an excuse for oppressive and unjust legislation, it may be lawfully resorted to for the purpose of preserving the public health, safety, or morals, or the abatement of public nuisances, and a large discretion 'is necessarily vested in the legislature to determine not only what the interests of the public require, but what measures are necessary for the protection of such interests.' And Judge Cooley—Constitutional Limitations, 7th ed., p. 837—declares: 'The limit to the exercise of the police power in these cases must be this: The regulations must have reference to the comfort, safety, or welfare of society.' In the same connection this court has said (*Sonora vs. Curtin*, 137 Cal. 583, 70 Pac. 674): 'A police regulation or restraint is for the purpose of preventing damage to the public or to third persons. There are certain lines of business and certain occupations which require police regulation because of their peculiar character, in order that harm may not come to the public, or that the threatened danger may be averted. Where the profession or business is not dangerous to the public, either directly or indirectly, it cannot be subjected to any police regulation whatever, which does not fall within the power of taxation for revenue.' *It appears, therefore, that the due exercise of the police power is limited to the preservation of the public health, safety, and morals, and that legislation which transcends these objects, whatever other justification it*

may claim for its existence, cannot be upheld as a legitimate police regulation. The business in which this defendant is engaged is not only innocent and innocuous, but is highly beneficial, as tending the more quickly to secure labor for the unemployed. There is nothing in the nature of the business, therefore, that in any way threatens or endangers the public health, safety, or morals. Nor, indeed, is the purpose of this statute to regulate in these regards, or in any of them. The declared purpose and the plain effect of the above-quoted section is to limit the right of an employment agent in making contracts—a right free to those who follow other vocations, and arbitrarily to fix the compensation which he may receive for the services which he renders.

“Here, then, is laid down a most drastic rule governing the conduct of a man in the prosecution of a harmless, legitimate, and beneficial business. Under the Constitution of the United States and of this state the protection guaranteed in the possession of property and in the pursuit of happiness is extended, as of necessity it must be, to cover the right to acquire property, and the right to acquire property must and does include the employment of proper means to that end. Says Judge Cooley (*Constitutional Limitations*, 7th ed. p. 889): ‘The general rule undoubtedly is, that any person is at liberty to pursue any lawful calling, and to do so in his own way, not encroaching upon the rights of others. This general right cannot be taken away.’ And this court has said (*Ex Parte Newman*, 9 Cal. 517): ‘The right to protect and possess property is not more clearly protected by the Constitution than

the right to acquire. The right to acquire must include the right to use the proper means to attain the end. The right itself would be impotent without the power to use its necessary incidents. *The legislature therefore cannot prohibit the proper use of the means of acquiring property, except the peace and safety of the state require it.*' In strict accord with this is the language of the Supreme Court of the United States, in *Holden vs. Hardy*, 169 U. S. 366, 42 L. ed. 780, 18 Sup. Ct. Rep. 383: 'As the possession of property, of which a person cannot be deprived, doubtless implies that such property may be acquired, *it is safe to say that a state law which undertakes to deprive any class of persons of the general power to acquire property would also be obnoxious to the same provision* (due process of law). Indeed, we may go a step further, and say that as property can only be legally acquired, as between living persons, by contract, a general prohibition against entering into contracts with respect to property, would be equally invalid.' And says Judge Cooley (p. 560), treating of this same subject matter: 'A doubt might also arise whether a regulation made for any one class of citizens entirely arbitrary in its character, and restricting their rights, privileges or legal capacities in a manner before unknown to the law, could be sustained, notwithstanding its generality. Distinction in these respects must rest upon some reason upon which they can be defended—like the want of capacity in infants and insane persons; and if the legislature should undertake to provide that persons following some specified lawful trade or employment should not have capacity to make contracts, or

*to receive conveyances, or to build such houses as others were allowed to erect, or in any other way to make such use of their property as was permissible to others, it can scarcely be doubted that the act would transcend the due bounds of legislative power, even though no express constitutional provision would be pointed out with which it would come in conflict. To forbid to an individual or a class the right to the acquisition or enjoyment of property in such manner as should be permitted to the community at large would be to deprive them of liberty in particulars of primary importance to their 'pursuit of happiness'; and those who should claim a right to do so ought to be able to show a specific authority therefor, instead of calling upon others to show how and where the authority is negated.'*

*"The application of these principles to the statute under consideration leads to the following irresistible conclusion: The petitioner is engaged in a harmless and beneficial business. As part of his 'property' in that business are the services that he renders in obtaining employment for those seeking it. It is not compulsory upon anyone to employ him, and whoso seeks to avail himself of his services is at liberty to reject them if the terms of the contract for compensation are not satisfactory to him. This right of contract common to the followers of all legitimate vocations is an asset of the petitioner in his chosen occupation, and, as has been said, is a part of the property in the enjoyment of which he is guaranteed protection by the Constitution. By the act in question he is arbitrarily stripped of this right of contract, and deprived of his property, and left, in*

following his vocation and pursuit of his livelihood, circumscribed and hampered by a law not applicable to his fellow men in other occupations. Such legislation is of the class discussed by Judge Cooley in the paragraph above quoted, —‘entirely arbitrary in its character, and restricting the rights, privileges, or legal capacities’ of one class of citizens ‘in a manner before unknown to the law.’ For such legislation, as he very justly adds, those who claim its validity should be able to show a specific authority therefor, instead of calling upon others to show how and where the authority is negatived.’ And where, it may be asked, could the line be drawn, if the legislature, under the guise of the exercise of its police power, should thus be permitted to encroach upon the rights of one class of citizens? Why should not the butcher, and the baker, dealing in the necessities of life, be restricted in their right of contract, and, consequently in their profits, to 10, 5, or 1 per cent? Why should not the contractor, the merchant, the professional man, be likewise subjected to such paternal laws, and why might not the legislature fix the price and value of the services of labor? The law is clearly one of those, the danger of whose enactment was foreshadowed by this court in *Ex Parte Jentzsch*, 112 Cal. 468, 32 L. R. A. 664, 44 Pac. 803, when it said: ‘So, while the police power is one whose proper use makes most potently for good, in its undefined scope and inordinate exercise lurks no small danger to the Republic. For the difficulty which is experienced in defining its just limits and bounds affords a temptation to the legislature to encroach upon the rights of citizens with experimental laws, none the less dangerous because well meant.’” (Italics ours.)

In the case of *State Ex Rel Star Publishing Co. vs. Associated Press (supra)*, 159 Mo. 410, 51 L. R. A. 151, 166, the Supreme Court of Missouri considered this same question in connection with an argument that because the Associated Press was incorporated the right was thereby secured by the State to exercise such control over the defendant as would justify fixing prices. On that point the court said:

“Nor has the respondent acquired any additional right by reason of its incorporation, to that it possessed before. Every one is at liberty to gather news; and the fact that one has greater facilities or finances for gathering and transmitting news, or that the business has grown into one of great magnitude, widespread in its ramifications, or that mere incorporation has been granted a company organized for the purpose of gathering news, does not, and cannot of itself, give the state the right to regulate what before incorporation was but a natural right. Tiedeman, Pol. Power, Sec. 93, p. 234. Were the rule otherwise than as just stated, the effect would be to deprive a person of a right to pursue any lawful calling, or to contract where and with whomsoever and at what price he will. The right thus to contract cannot be interfered with; it is a part and parcel of personal liberty, and therefore under the protection of Sec. 30 Art. 2 of our State Constitution and of the 14th Amendment of the Constitution of the United States, as heretofore quoted.”

In the case of *Schmidinger vs. Chicago*, 226 U.

S. 578, the Supreme Court had under consideration the constitutionality of an ordinance of the City of Chicago, fixing the weights at which bread might be sold. The court sustained the validity of the ordinance, but it is significant that in so doing Mr. Justice Day said concerning the ordinance:

“It has not fixed the price at which bread may be sold. It has only prescribed that the standard weight must be found in the loaves of the sizes authorized.”

In the case of *State vs. McCool*, 83 Kas. 430, 111 Pac. 477, the Supreme Court of Kansas sustained a statute regulating the weight of bread, but the court called attention to the fact that the statute did no attempt to fix the price.

As against this array of authority we have been able to find only one case in which any court has sustained the right to fix a price of a commodity or service, other than that furnished by a public utility, or one that is affected with a public interest, and that is the case of *Guillotte vs. New Orleans*, 12 La. 432, a very early case, in which the court held that the city could fix the price of bread, and that if the baker did not desire to do business within the limits of the city he could go elsewhere. That reasoning would support any kind of price-fixing statute. We



may suggest, however, that the purpose of the Constitution was not to guarantee a man the right to go out of business when the statute put him out, but to permit him to remain in business; that case, a very early one, has not, so far as we can find, been followed anywhere; not even in the courts of Louisiana, and we submit, therefore, that it is wholly contrary to the unanimous authority elsewhere.

From the above and foregoing, it appears conclusively, we submit, that if the initiative in question be treated as a *regulation* of the business (although in truth and in fact it is absolute prohibition), it cannot be sustained. In other words, it runs counter to the unanimous rule that a purely private business, such as the employment business, is not subject to price regulation, and that it cannot be deprived of the right to contract.

It is contended, however, that the business is affected with a public interest within the rule of the case of *German Alliance Insurance Co. vs. Lewis (supra)*, 223 U. S. 389, and that the act is valid as a police regulation.

That case is no authority for the principle sought to be established by the act in question.

Every one is dependent upon the grocer, the dry goods merchant, the physician and surgeon, and in fact to a greater or lesser degree upon every vocation, business or calling known to presentday enterprise. No one contends, however, that the legislature may prohibit the "worker" and the grocer, from contracting for the purchase and sale of groceries or the dry goods merchant and the "worker" from contracting for the purchase and sale of dry goods, or prohibit the physician and surgeon, or even the plumber, from *charging* the "worker" for services rendered.

It is expressly stated in the German Alliance Insurance Company case that that decision is not authority for price-making in private business. Upon the theory contended for, the legislature could lawfully fix the price of steel and iron products, because the steel industry has fallen into the hands of large aggregations of capital with which all persons requiring such products must deal. It could fix the price at which the farmer might sell the products of the soil, because farmers are in exclusive possession of the best farming lands and the public is dependent upon the products thereof for daily existence, yet it has never been suggested that legislative authority could go to that extent. The phy-

sician and surgeon, through the very nature of his business, deals with suffering humanity, and under such conditions, and because of disease and suffering, persons are most susceptible to extortion and imposition. It is well known that one suffering because of a severe bodily pain, or from a distressing ailment, will follow almost any suggestion tending to alleviate or remove such condition, and that in many instances unconscionable charges have been made therefor and wholesale frauds committed by reason thereof. An act, therefore, which prohibited physicians and surgeons from charging "workers" for services rendered by them, and from contracting with them in relation to such services, would stand upon as firm a foundation as does Initiative Measure No. 8. Assuming, therefore, that the business or profession is affected with a public interest, it does not follow that it may be regulated out of existence or the business or profession practically destroyed.

But the question involved here goes much further than the mere regulation of the business of employment agencies for the protection of those who deal with them, by inhibiting contracts between such agencies and "workers". The act, in-

stead of aiding or protecting the workman in his natural and constitutional right to seek work, closes against him the door of the best, and in many instances the only real market he has in which to offer his labor. To argue, therefore, that the initiative was enacted for his protection, is but to condemn it, because it manifestly does not in any way safeguard his rights or undertake to regulate the business so that he will be protected against fraud or imposition, as does the Spokane ordinance under which appellants conducted their business, unless it may be logically said that his rights are safeguarded by his being deprived of the privileges accorded all other free and lawfully competent men.

With equal propriety and strength of logic, it might be well contended that an act which prohibited owners of private markets from charging farmers and trucksters for exposing their products for sale in such markets, was a valid exercise of the police power, because it regulated private markets in the interest of such persons, in that it protected those theretofore renting space therein and in front thereof, against the frauds and extortions practiced by *some* owners of such market places. It might with equal reason be urged that an act

was valid under the police power which forbade the great department stores from accepting any remuneration from their employees for the luncheons which such stores provide for the accommodation of their employees and customers.

The initiative measure prohibits those engaged in the employment business from charging for the services which they may render in finding employment for others. In the instance first cited the owners of private market houses would be prohibited from charging for space occupied therein or in front thereof; in that of the second instance a charge for a luncheon in a large department store would be interdicted. Under the act here for consideration, and in each of the instances named, all parties are and would be deprived of both liberty and property, while those the legislation assumed to protect would be deprived not only of the liberty of contract but of a great convenience and natural right.

The police power of the state is not unlimited. The rule is that no arbitrary or unreasonable requirement may be enacted into law, and that the legislature can go no further than is reasonable and necessary.

In the case of *Lawton vs. Steele*, 152 U. S. 133, 137, the court said:

“The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations.”

Continuing, the court said:

“In all these cases the acts were held to be invalid as involving an unnecessary invasion of the rights of property, and a practical inhibition of certain occupations harmless in themselves, and which might be carried on without detriment to the public interests.”

In the case of *Holden vs. Hardy*, 169 U. S. 366, 398, the court said:

“The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression, or spoliation of a particular class.”

In the case of *Dobbins vs. Los Angeles*, 195 U. S. 223, 236, the court said:

“But notwithstanding this general rule of the law, it is now thoroughly well settled by decisions of this court that municipal by-laws and ordinances, and even legislative enactments *undertaking to regulate useful business enterprises, are subject to investigation in the courts with a view to determining whether the law or ordinance is a lawful exercise of the police*

*power, or whether, under the guise of enforcing police regulations, there has been an unwarranted and arbitrary interference with the constitutional rights to carry on a lawful business, to make contracts, or to use and enjoy property.*

“In *Lawton vs. Steele*, 152 U. S. 133-137, 37 L. Ed. 385-388, 14 Sup. Ct. Rep. 499-501, Mr. Justice Brown, speaking for the court, said upon this subject: (Italics ours.)

“‘To justify the state in thus interposing its authority in behalf of the public it must appear, first, *that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interest, arbitrarily interfere with private business or impose unusual and unnecessary restrictions upon lawful occupations.* In other words, its determination as to what is a proper exercise of its police power is not final or conclusive, but is subject to the supervision of the courts.’” (Italics ours.)

In the case of *House vs. Mayes*, 219 U. S. 270, 281, the court said:

“Briefly stated, those principles are: That the government created by the Federal Constitution is one of enumerated powers, and cannot, by any of its agencies, exercise an authority not granted by that instrument, either in express words or by necessary implication; that a power may be implied when necessary to give effect to a power expressly granted; that while

the Constitution of the United States and the laws enacted in pursuance thereof, together with any treaties made under the authority of the United States, constitute the supreme law of the land, a state of the Union may exercise all such governmental authority as is consistent with its own constitution, and not in conflict with the Federal Constitution; that such a power in the state, generally referred to as its police power, is not granted by or derived from the Federal Constitution, but exists independently of it, by reason of its never having been surrendered by the state to the general government; that among the powers of the state, not surrendered—which power therefore remains with the state—is the power to so regulate the relative rights and duties of all within its jurisdiction as to guard the public morals, the public safety, and the public health, as well as to promote the public convenience and the common good; and that it is with the state to devise the means to be employed to such ends, *taking care always that the means devised do not go beyond the necessities of the case*, have some real or substantial relation to the objects to be accomplished, and are not inconsistent with its own Constitution or the Constitution of the United States. The cases which sanction these principles are numerous, are well known to the profession, and need not be here cited.” (Italics ours.)

In the case of *Smith vs. Texas*, 233 U. S. 630, the court said:

“If the service is public, the state may prescribe qualifications and require an examination to test the fitness of any person to en-



gage in or remain in the public calling. *Re Lockwood*, 154 U. S. 116, 38 L. Ed. 929, 14 Sup. Ct. Rep. 1082; *Hawker vs. New York*, 170 U. S. 189, 42 L. Ed. 1002, 18 Sup. Ct. Rep. 573; *Watson vs. Maryland*, 218 U. S. 173, 54 L. Ed. 987, 30 Sup. Ct. Rep. 644. The private employer may likewise fix standards and tests, but, if his business is one in which the public health or safety is concerned, the state may legislate so as to exclude from work in such private calling those whose incompetence might cause injury to the public. But, as the public interest is the basis of such legislation, the tests and prohibition should be enacted *with reference to that object, and so as not unduly to 'interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations.'* ”

In the case of *State vs. Redmon* (Wis.) 114 N. W. 137, 14 L. R. A. N. S., 229, 236, the Supreme Court of Wisconsin said:

“It is not every enactment which will to some extent promote the public health, comfort, or convenience, which is legitimate. Otherwise the way would be open for legislative interference with the ordinary affairs of life to an extent destructive of many of the most valuable purposes of civil government. An expert on sanitation, or one on the manner of living best calculated to promote long and enjoyable life, who has become an enthusiast in his special study of the matter, could doubtless suggest a multitude of really, or apparently, good rules to be followed; the temperature of the air of sleeping rooms, the proper size of the rooms as regards the number of occupants, the ar-

rangements for frequently changing the air by displacing that within for that without the habitation, the hours for sleeping, for retireing, and for arising, the amount and kind of food to eat, the proper number of meals per day, the proper admixture of solids and liquids and length of time for each meal, the amount and kind of exercise required, and other things too numerous to mention, might be suggested for legislative interference, each with a provision for a severe penalty for its violation, with a divison of the penalty, perhaps, between the informer and the public, till one would be placed in a straight-jacket, so to speak, that liberty and the pursuit of happiness, the incentive to industry, to the acquirement and enjoyment of property—those things commonly supposed to make a nation intelligent, progressive, prosperous, and great—would be largely impaired, and in some cases destroyed. That such an extreme would be regulation run mad, and is quite improbable, 'tis true, but it would be possible without limitations of some sort, if a police law be conclusively legitimate merely because it promotes, however trifling in degree, public health, comfort or convenience."

These principles may be well illustrated by calling the court's attention to the very well known rule or law that municipal authorities may dynamite a building in the path of a large fire in order to prevent a general conflagration and extensive loss, and that no liability results thereby. It would not be argued, however, because of that fact, that the

public authorities might destroy any building under any and all circumstances with a like immunity from liability. In other words, the police power being founded upon *necessity*, its *limit is necessity*.

In considering the theory of the majority of the judges sitting in the lower court, and counsel representing appellees, that the act in question is but a *reasonable regulation*, we may well ask: Has the legislature the power to regulate a lawful and beneficial business to the extent of prohibiting hundreds of individuals who may be engaged in such business from contracting with thousands of legally competent men who wish to contract with them, and who are permitted by the laws of the regulating power to contract in respect of all other lawful businesses, trades and vocations? Or, to state the proposition in another form, has the legislature the power to regulate a lawful and beneficial business so as to either directly or indirectly prohibit thousands of men legally competent to contract, from contracting with a certain class of persons, or certain lawful and beneficial agencies for rendering services to them in the conduct of such business? A mere statement of the proposition is but to refute it. The health, safety, morals and general welfare

of the people does not justify such unnecessary and arbitrary legislation as that under consideration.

Under the guise of the police power the legislature may not take away man's natural right to earn a living in a business which is both lawful and beneficial. Neither can it by regulation practically destroy that right or the business itself, or man's natural right to contract with respect to such business, or deprive the "worker" of the right to engage whom he pleases to render a lawful and beneficial service for him. This doctrine is fully sustained by numerous decisions of this court heretofore cited.

If it be assumed that a perfectly rational and legally competent human being may be prohibited, either directly or indirectly, from entering into lawful and beneficial contracts, can a law be sustained which either directly or indirectly forbids him from contracting with a certain class of persons who are engaged in a lawful and beneficial business, while such person is left free to contract in all other respects? Such legislation is both arbitrary and discriminatory, and singles out a certain class, business, vocation or calling which is perfectly lawful and useful, as a special subject for hostile legislation; for, if a "worker" be incompetent to contract in

respect of such business, vocation or calling, he is incompetent to enter into a contract with his employer concerning his services, or any other person in respect of any other lawful business, vocation or calling. We think that it is clear from the decisions of this court that this cannot be done.

See also

*In Re Dickey (supra)*, 144 Cal. 234.

Classification must be reasonable and just, and based upon some real and substantial distinction. It cannot be arbitrarily made without any substantial basis.

*Southern Ry. Co. vs. Greene*, 216 U. S. 400, 417.

The liberty of contract between the employment agent and the worker guaranteed by the 14th Amendment is absolutely prohibited by the measure under consideration. The "worker" who seeks labor in the State of Washington is no longer free to engage another to find him a place for the employment of his skill and labor. Neither can he who earns his living by finding work for others contract for the rendering of a service concerning that which is conceded to be useful and beneficial for a consideration to be paid by the "worker," however well educated, intelligent and thrifty the laborer.

stenographer, marine engineer, clerk, printer, locomotive engineer, fireman, conductor, teamster, brick-mason, iron moulder or carpenter may be.

It is no answer, in an effort to sustain such legislation, to say that the employment agent may take compensation from the employer for finding him a "worker," for the liberty of contract is gone in the particulars mentioned. If the "worker" says, "I want to engage an employment agent, as my special representative and not the representative of the employer to find work for me which I badly need," he is told that this he cannot do, because he is no longer a free and independent man with the liberty of contract guaranteed to him by the Federal Constitution.

If the legislature may not interdict a lawful and beneficial business, or deprive the individual of the right to contract in respect thereto, the constitutional guarantees are not preserved by being uprooted by piecemeal. Concede the act to be a valid exercise of the police power, and it follows that the legislature may likewise prohibit the employment agencies and employers from contracting for the furnishing of "workers" to them by such agency, however honestly they may be conducted.

There is nothing in the employment business which in and of itself endangers public health, safety or morals. Every department of the government that has considered the subject, every court that has spoken in relation thereto, has declared the business to be useful and beneficial. No evil inheres in the business itself. It is in and of itself innocent and innocuous. True, frauds may be perpetrated in it as well as all other ventures, but it does not follow, because frauds have been and may be perpetrated in the conduct of the business that all honest men engaged in conducting such agencies shall be arbitrarily condemned; that the freedom of contract shall be denied; that all persons engaged in a confessedly useful and beneficial employment shall be deprived of the right to use their faculties and to earn their living in a lawful and legitimate way.

Had it not been the purpose to destroy the business by arbitrary legislation, it would have been regulated along the lines prescribed by the Spokane ordinance, under which appellants are licensed to carry on their business.

This ordinance regulates the business so that no imposition may be practiced upon any who contract with employment agencies, in that it provides:

(a) The business shall not be conducted without the procurement of a license and the payment of a fee of \$100.00 therefor.

(b) Licenses shall not be granted for a period shorter than one year, except upon giving bond in the sum of \$1,000.00, conditioned that all valid claims of all persons by reason of business transactions under the license shall be paid forthwith.

(c) That every employment agency shall keep a registry in which there shall be entered the names and addresses of the employers desiring help through such agency; the nature and place of such employment, the date and amount of the payment of each fee, and the name of each applicant for work paying a fee. Such registry shall be open at all reasonable hours for inspection and examination by the license inspector, chief of police and the labor agent of the City of Spokane.

(d) That a receipt shall be given each applicant for employment showing that the agency has agreed to procure a position for him with the person named on the order set forth, and the date thereof, at wages, board and lodging set out in the receipt, and who is to pay the fare to the place of labor. This receipt also provides that if the applicant



proceeds without delay to the place of employment and he fails to secure employment, or is refused employment of the character and at the rate of pay therein stated, the agency will repay the amount received and the fare, if any, paid by the applicant from Spokane to the place of employment and return, also wages at the rate indicated in the receipt for the length of time required in the ordinary course of travel in going from Spokane to the place of employment and return.

(e) In the event of controversy between the parties with reference to the application, the matter shall be heard by the City Council, and in the event the Council finds against the agency it shall pay the applicant such witness fees and other penalties as ordered by the Council.

(f) That it shall be unlawful for an agency to receive any fee \* \* \* without first stating to applicant the general nature of the employment, the wages to be paid, the hours of labor, distance from the employment office, the facts as to a strike or other industrial controversy, if one exists, and as to the permanency of the work, and such other general information as may enable the applicant to determine whether the position offered is such as he desires to accept.

(g) The agency shall ask the applicant if he has any objection to working at any place or for any employer engaged in the line of work offered by the agency.

(h) That it shall be unlawful for the agent to take money from any applicant for work, or to fill any order, unless the order therefor shall have been received or renewed within ten days prior thereto.

(i) No such agency shall be conducted in a room or any part thereof where intoxicating liquors are sold. No fee shall be charged for furnishing employment for any work or contract in which the employment agency is interested. No fee shall be charged the applicant for employment where a fee for registration or otherwise *shall be accepted of the employer*. (Record pp. 7, 8; Plaintiff's Exhibit "A," Record pp. 14-17.)

This ordinance may be said to be reasonable regulation, instead of practical destruction of a lawful business and of the natural right of man to earn his living in any lawful, useful and beneficial calling, as does the act under consideration, which is in every respect unnecessary, unreasonable, arbitrary and discriminatory.

This court, in the recent case of *Brazee vs. Michigan, supra*, 241 U. S. 340, held that the legislature might regulate employment agencies to the extent of requiring them to take out licenses and prescribe *reasonable regulations in respect of them*. But no court has ever held that the legislature might go to the extent prescribed by Initiative Measure No. 8 of the State of Washington. This late expression of this court, as we view it, is clear authority against the exercise of the power attempted by the measure of which we complain, and had the act under consideration regulated the business, as does the Spokane ordinance, no just complaint could have been made.

In *W. W. Cargill Co. vs. State of Minnesota, supra*, 180 U. S. 452, the court held an act of the legislature of Minnesota valid which required elevators and warehouses in which grain was received, stored, weighed, shipped, etc., to take out licenses in compliance with the provisions of the act. The measure was sustained upon the theory that there was great liability of abuse in the weighing and grading of grain by the purchasers thereof, who owned the elevators and warehouses, and that the business being affected with a public interest was a proper subject of regulatory legislation. It is in-

conceivable, however, that this court would have held an act of the Minnesota legislature valid which prohibited the owners of such instrumentalities of business from making any charge against farmers who might be defrauded by an ascertainment of the weights and grades, or the charges for storing their grain in elevators and warehouses where the same was received for such purposes. Yet, it is just as consistent to contend that such an act would be valid as a regulation because the owners of the elevators might secure their compensation for storing, weighing, etc., from those who might purchase the grain from the farmers and thereafter store it with them, as it is to insist that the employment agencies may pursue their business by persuading the employers of labor to patronize them.

It was contended by the appellees, and their contention was sustained by the lower court, that the measure does not prohibit the business, but regulates it. Employment agencies are therefore recognized as lawful in the State of Washington. The question, therefore, narrows itself down to the following proposition: Can the legislature prohibit a business which it recognizes as lawful, from serving for compensation or from contracting in respect

of such business with those who are confessedly *sui juris*?

Granting that the legislature may regulate the business so as to protect its patrons against fraud, extortion and imposition of every character, it may be confidently asserted that no act which directly or indirectly denies to a *sui juris* person or to a class of *sui juris* persons the right to employ a lawful agency to find work for them, or which denies to an individual or a class of individuals the right of performing and charging for services rendered such persons in the conduct of a business recognized by the legislature to be lawful, can be sustained under Section 1 of the 14th Amendment to the Constitution of the United States, because such an act is not only an infringement of, but an absolute deprivation of, "the rights secured by the fundamental law."

## VI.

INITIATIVE MEASURE NO. 8 IMPAIRS THE OBLIGATIONS  
OF CONTRACTS IN VIOLATION OF SECTION 10 OF  
ARTICLE I OF THE FEDERAL CONSTITUTION.

It is clear that the obligations of all contracts in existence at and prior to the adoption of the measure under consideration, between appellants and "workers," and the City of Spokane and appellants, are impaired by the act in question.

The decree of the lower court sustaining the act and refusing the relief prayed for should be reversed.

Respectfully submitted,

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### I.

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# Supreme Court of the United States

OCTOBER TERM, 1916

JOE ADAMS, ET AL.,

*Appellants,*

*vs.*

W. V. TANNER, Attorney General of the State of Washington, and GEORGE H. CRANDALL, Prosecuting Attorney of Spokane County, State of Washington,

*Appellees.*

Upon Appeal from the United States District Court  
for the Eastern District of Washington,  
Northern Division

## REPLY BRIEF OF SOLICITORS AND APPELLANTS

Several propositions advanced by the appellees in their brief herein are, we firmly believe, so unsound and wanting in merit that we have been moved to prepare a short reply brief for the purpose of calling attention to them.

In the first place, the character of the act in question has not been appreciated by the appellees.

It will be observed that the act makes it a penal offense, punishable by both fine and imprisonment, for *any* person to demand or receive, either directly or indirectly, from any person seeking employment, or from any person on his or her behalf, any remuneration or fee whatsoever for furnishing him or her with employment or with information leading thereto. Consequently, the right of the patron of the employment agency to avail himself of its service is so bound up with the right of the employment agent to serve his patron, that the one cannot be considered without the other; and, further, if the act unconstitutionally infringes ~~without~~ the right of the patron, it likewise infringes the right of the employment agent, and *vice versa*. Hence, this act must be considered from the standpoint of both parties. In *New York Central R. R. Co. vs. White*, decided March 6, 1917, in considering the New York Workmen's Compensation Act, this court said:

"In considering the constitutional question, it is necessary to view the matter from the standpoint of the employee as well as from that of the employer. For, while plaintiff in error is an employer, and cannot succeed without showing that its rights as such are infringed (*Plymouth Coal Co. vs. Pennsylvania*, 232 U. S. 531, 544, 58 L. ed. 713, 719, 34 Sup. Ct. Rep. 359; *Jeffrey Mfg. Co. vs. Blagg*, 235 U. S. 571, 576, 59 L. ed. 364, 368, 35 Sup. Ct. Rep.

167, 7 N. C. C. A. 570), yet, as pointed out by the court of appeals in the *Jensen* case (215 N. Y. 526), the exemption from further liability is an essential part of the scheme, so that the statute, if invalid as against the employee, is invalid as against the employer."

Likewise, in a similar case, *Mountain Timber vs. Washington*, decided by this court March 6, 1917, it is said:

"While plaintiff in error is an employer, and cannot succeed without showing that its constitutional rights as an employer are infringed (*Plymouth Coal Co. vs. Pennsylvania*, 232 U. S. 531, 544, 58 L. ed. 713, 719, 34 Sup. Ct. Rep. 359; *Jeffrey Mfg. Co. vs. Blagg*, 235 U. S. 571, 576, 59 L. ed. 364, 368, 35 Sup. Ct. Rep. 167, 7 N. C. C. A. 570), yet it is evident that the employer's exemption from liability to private action is an essential part of the legislative scheme and the *quid pro quo* for the burdens imposed upon him, so that if the act is not valid as against employees, it is not valid as against employers."

No employee was a party to, or appeared in, the case.

It will not do, therefore, to consider the act, as the appellees do, merely from the standpoint of the employment agent, but it must be considered from the standpoint of the patron of the employment agency as well, because if the patron has a right to employ an agent, that right cannot be interfered with by

mere indirection—by prohibiting the agent from serving the patron for compensation. We say “for compensation” because otherwise the right to contract is illegally interfered with; and a constitutional right is <sup>not</sup> dependent upon charity, since this court will not presume that any person will violate the act, nor that he will work without compensation. And if the act is void as an unlawful interference with the right of the patron, it is necessarily an unlawful interference with the right of the agent. Hence, if the patron has a sufficient legal interest to maintain an action to urge the invalidity of the act, his rights must be considered on this appeal. That he has such interest is settled.

*Truax vs. Raich*, 239 U. S. 33.

That action was instituted by a waiter in a restaurant to restrain state officials from enforcing an act compelling every employer, employing more than five workers at any one time, to employ not less than eighty per centum qualified electors or native-born citizens of the United States, or some subdivision thereof. The principle here involved was stated as follows:

“It is further urged that the complainant cannot sue save to redress his own grievance (*McCabe vs. Atchison, T. & S. F. R. R. Co.*, 235 U. S. 151, 162, 59 L. ed. 169, 174, 35 Sup. Ct.

Rep. 69) ; that is, that the servant cannot complain for the master, and that it is the master who is subject to prosecution, and not the complainant. But the act undertakes to operate directly upon the employment of aliens, and if enforced would compel the employer to discharge a sufficient number of his employees to bring the alien quota within the prescribed limit. It sufficiently appears that the discharge of the complainant will be solely for the purpose of meeting the requirements of the act and avoiding threatened prosecution under its provisions. It is, therefore, idle to call the injury indirect or remote. It is also entirely clear that unless the enforcement of the act is restrained the complainant will have no adequate remedy, and hence we think that the case falls within the class in which, if the unconstitutionality of the act is shown, equitable relief may be had."

While the relation of master and servant actually existed in that case, it is not to be supposed that such an act would illegally interfere with the right to labor merely because the relation did exist, but would not do so when the act alone prevented the formation of that relation. In other words, the right to assert the right to labor, free from illegal interference, is not dependent upon actual employment at the time a void act is supposed to become operative or is sought to be enforced. Likewise, the right to assert an illegal interference with a constitutional right depends only upon such interference at the time the right is asserted. Hence, not

only patrons of appellants, between whom and appellants actual contracts for services existed at the time the act in the case at bar was supposed to become effective, but any one desiring to avail himself of the appellants' services, may assert the unconstitutionality of the act. Hence, the question is, Does the act illegally interfere with the right of either patron or agent? If such interference exists in either case, the act must be held void.

At the outset, it is well to remember that the act in question is an initiative measure, voted on at the 1914 general election in the state. In that connection we desire to invite the court's attention to the case of *State ex rel. Howell vs. Superior Court*, 81 Wash. 623, in which it appears that, in order to secure a vote on an initiative measure, petitions signed by a number equal to ten per cent of the vote cast at the last preceding general election, must be filed with the Secretary of State, and such petitions be checked and the names thereon certified as legal voters by the registration officers, in precincts where registration is required by law, and by a school director, road supervisor, etc., in districts in which registration is not required. From that case it appears that the petition on which the identical act in question here was founded was

made up in large part of false and forged signatures, in such number that their rejection would invalidate the petition, but the court held that the Secretary of State, on whom, by the statute, was imposed the duty of determining whether the petitions were signed by sufficient number of legal voters, was compelled to accept the certification of these officers, although it was conceded that the signatures were forged. In the majority opinion it is said:

“The contentions of counsel relate to a number of alleged forged and fraudulent signatures upon the petitions, which, it is insisted, should be rejected as invalid signatures, and also, to alleged defects and irregularities in certifying and verifying as proper signatures a number of the names upon the petitions, which, it is insisted, should be rejected. The main problem is, Does the number of valid, properly verified signatures upon the petitions for each of these initiative measures exceed 31,836, which is conceded to be the required number to authorize the submission of initiative measures to the voters at the general election of the present year?” (Page 628.)

In the dissenting opinion of Judge Gose, the following appears:

“Both the Secretary of State and two trial judges, after an exhaustive and painstaking examination of the petitions (the latter aided by an expert in handwriting), have found that the petitions are honeycombed with fraudulent signatures. With these signatures eliminated, most of the petitions are short of the number

required by the constitution to place them before the people, and yet the majority say, in effect, that a fraudulent petition is cleansed of its sins if properly certified, and that the people are without recourse other than to enforce the penal provisions of the statute. I cannot acquiesce in so monstrous a doctrine. In its last analysis, it means that one man can collude with a certifying officer, if he can find one sufficiently corrupt, write sufficient names upon the petition to satisfy the mandate of the constitution, have it certified, and that neither the secretary of state, who is charged with expending the public money in placing the measure before the people, nor the courts, may go behind the return and proclaim and condemn the fraud. It is a rule of universal application that an interpretation of a statute which leads to absurdities should be avoided. As was aptly said by Judge Claypool in an opinion filed in the court below, 'People who propose to make new laws are not wronged by being required to observe the laws already in existence.' Fraud in the initiation of a law to be submitted to the people is as ugly and unclean as fraud in a contract, and all courts hold that a contract conceived in fraud may be avoided by the party who has been defrauded. The parties who have been defrauded in the case at bar are the taxpayers from whom the money has been taken to place before the people an initiative measure which is short of the constitutional number to authorize it to be submitted, except by counting the fraudulent signatures" (pp. 654, 655).

In the dissenting opinion of Judge Chadwick it is said:

"The effect of the decision of the majority



is that fraud can stalk rampant through the courts, which are established to maintain justice. I am unwilling to hold any such doctrine. The legislature was careful to say that no less than a certain number of valid signatures should be on the petition. It was not the intent of the people, when the constitutional amendment was adopted, that any other rule should prevail. We are not passing on the merit of the proposed laws. The fraud in these cases is not denied. The forgeries are so numerous and so glaring and they speak so loudly that no man would have the hardihood to deny their existence. The good faith and findings of the secretary and the court are not questioned. It is not insisted that the petitions contain a sufficient number of legal signatures. Proponents admit all these things, but they say, and the court finds, that the law is helpless; that, inasmuch as the petitions are in form sufficient, we cannot inquire into their substance. I do not believe that the law is helpless. The legislature has not legalized fraud and perjury and forgery, and courts should not do so (pp. 663, 664).

“With the fact admitted that the petitions do not contain a sufficient number of legal signatures, it seems to me that the court has made a mistake in searching for precedent and authority to sustain them. The initiation of laws by petition is a new thing. It stands unrelated to any other subject of the law’s concern, and instead of looking for authority that has been applied to cases where courts have said they would not review the discretion of public officers, we have a rare opportunity to say that, with the adoption of new ideas, we will declare a rule founded in the doctrine of common honesty regardless of precedent. If

there be no authority or precedent for holding tight to the doctrine of honesty in all public affairs, then, I say, as I have said twice before (*Mazetti vs. Armour & Co.*, 75 Wash. 622, 135 Pac. 633, 48 L. R. A. (N. S.) 213; *Weber vs. Doust*, post p. 668, 143 Pac. 148), it is high time that we make a precedent.

“There is only one test, and that is, an honest petition containing a sufficient number of legally qualified voters. Can any one doubt what the attitude of proponents would be if they were opposing, rather than promoting, these measures? If the other side were here with a petition reeking and dripping with fraud, would they not insist that the parties who certified the fraud could not purify it so as to pass the inspection of canvassing officers and of the courts? Will proponents deny that they would be here asserting that the measure proposed be sustained by reference to the doctrine of common honesty and that the name of every petitioner should be the truthful expression of every one who signed it? It may be admitted that there are thousands of names of good, honest men on the petitions, but that is not enough. The people themselves have fixed a certain limit of ten per cent of the legal voters; and before the petition can be voted on, it should have the requisite number of legal signatures. To hold the contrary, is to nullify the limit fixed by the people. If this procedure is upheld, we would have to allow a petition actually signed by one or one hundred men, if there were a sufficient number of fraudulent names to make up the number required and these certified in form.

“Something was said in oral argument

about progressive measures. To sustain fraud and forgery is not a proper test of progress. Progress stands for honesty. To take a petition acknowledged to be fraudulent by counsel and by every member of this court and purify it by judicial breath is retrogression in its worst form. The people are demanding that the courts shall look to the justice of the case and abstain from technical constructions. It is my opinion that no case has ever been before this or any other court where justice has been so clouded by a technicality.

"I have no fault to find with my brothers who have signed the majority opinion. They are as sincere in their opinion as I am in mine. I believe they have misconceived and misapplied the law.

"I have written my opinion of the proceedings attending the preparation and filing of the petitions in these cases so that when the legislature is convened it will know that it has been judicially held that certified fraud is legal fraud; that its former act has no gate to shut out frauds and forgeries and that the citadel of truth and honesty that it undertook to build around the constitutional amendment permitting and encouraging direct legislation is a house of cards" (pp. 665-667).

The history of the world contains no <sup>instance</sup> ~~precedents~~ of such devotion to the *public welfare* as stopped not at forgery and perjury.

On page 11 of appellees' brief appears a statement that these employment agents are still doing

business in the State of Washington. Such a statement is utterly *dehors* the record, and for that reason we are at a loss to know how to reply, because to do so is likewise to go outside of the record. But, if the statement is passed without notice, we fear this court may be inclined to treat it as admitted, and for that reason we must notice it. The fact is these agencies are not doing business in the State of Washington, but were stopped by the appellees immediately upon the act taking effect.

It must be remembered that the case was heard on motion to dismiss, which motion, on familiar principles, admits the facts well pleaded. Hence, the case must be considered with reference to such facts, not in disregard of them, as do the appellants. These, then are the facts:

The field of labor, the location of factories, plants and industries of employers in the State of Washington are very diversified, and in many instances so scattered and at such remote places from transportation that it is impossible for laboring men to learn of positions which may be open thereat without expending a considerable sum of money to go and investigate the same and ascertain the conditions as they there exist. The employment business consists in securing employment for persons

desiring to work and in aiding such persons not only to secure such employment, but to learn at a minimum cost and with the lowest possible expenditure of time, all the facts and circumstances connected with the employment in question, including the place where, and the person or persons for whom such labor is to be performed, the character of the business, conditions of employment there existing, wages or remuneration paid for the work, and the standing of the person, firm or corporation for whom such work or labor is to be performed. The appellants have a large number of regular customers who come to them when out of employment, to ascertain where employment can be secured, and who depend and rely upon appellants to furnish them with the necessary information leading thereto. Appellants have also a large number of regular customers who advise and communicate with them from time to time with reference to labor needed at different points in the State of Washington and elsewhere; for different kinds and grades of employment, covering and consisting of almost every kind of employment for which labor is needed, and for the services so performed by the appellants in securing and furnishing such information and employment a fee is charged of these applicants. That by reason of the services performed by the appellants, persons

seeking employment are able to learn of the positions open to them as soon as appellants learn of the same, and are able thereby to secure employment very much more rapidly than they would be able to do but for the services rendered by the appellants, and are able to secure the same without any appreciable expenditure of time. (Par. V, Bill of Complaint; Record, pp. 4-5.) That appellants cannot perform these services and conduct their said agencies except at great financial loss and expense unless they are permitted to charge such applicants a reasonable fee for the services rendered, and unless they are permitted to make such charge they will be compelled to abandon the business of conducting such agencies. (Par. VI, Bill of Complaint; Record, p. 6.) That in order to remain in the employment business, it is necessary to secure accurate and true information, and to convey such information fully, honestly and completely to applicants therefor, and that unless agencies do so without any misrepresentations of any kind, name or nature, it is impossible for a person engaged in the employment business to remain therein; that one cannot remain in said business permanently unless he secures by merit and retains by reliability a reputation for accuracy and honesty. (Par. VII, Bill of Complaint; Record, p. 6.) The business of the employment agent is a

legitimate business, as much so as is that of the banker, the broker or the merchant, and is not only innocent and innocuous, but is highly beneficial to laborers and all persons availing themselves of such service because it tends more quickly to secure labor for the unemployed and at a small fraction of the cost to the applicant of the services performed by the appellants, which small cost is due to the volume of business conducted by appellants. (Par. IX, Bill of Complaint; Record, p. 8.) That the average charge made by the appellants for services rendered by them has been the sum of \$1.00 for each position furnished, and that such fees are the sole income from the business and necessary to be received by appellants in order to conduct the business. That they have each conducted the business honestly, and have not been guilty of any extortion of any kind. (Par. X, Bill of Complaint; Record, p. 9.) That the business built up by the appellants is, as to each of them, worth the sum of \$5,000.00. (Par. XV, Bill of Complaint; Record, p. 12.)

Bearing these facts in mind, it will be observed that the Supreme Court of the State, in the case of *State vs. Rossman*, 51 Wash. Dec. 359, 161 Pac. 349, decided December 5, 1916, and not yet officially reported, held that the act, properly construed, ap-

plies to stenographers and bookkeepers; in other words, the most intelligent and highly-paid class of administrative employes known; and in *Huntworth vs. Tanner*, 87 Wash. 670, the court held that the act applies to laborers and persons performing manual labor. From these two decisions it is apparent that the act applies not to the ignorant and the poor alone, as the appellees treat it as doing, *but to every person who performs manual labor, whether executive or administrative.*

Appellees' contentions yield most readily to argument under two heads:

1. Is the act prohibition of employment business, or of the right to employ an employment agent?
2. Can the legislature prohibit the employment business, or the use of the services for compensation of an employment agent?

# I.

## IS THE ACT PROHIBITION OF EMPLOYMENT BUSINESS, OR OF THE RIGHT TO EMPLOY AN EMPLOY- MENT AGENT?

The court will remember that it is an admitted fact in this case that appellants' agencies cannot be conducted unless they are permitted to charge applicants for employment, or for information con-



erning employment, a fee. And, as stated by Judge Cushman in his dissenting opinion, the business with which the court is called on to deal is the finding of a market for labor, not finding labor for a market. It thus appears that all compensation is, by the act, taken from the appellants in the business which they have built up. In other words, while the right to labor is, in a theoretical sense, permitted by the act, all reward for labor is taken away, and the business is therefore prohibited. It is not sufficient to view the act merely according to its terms, but, as this court has frequently said, substance must be regarded and form disregarded; that it is the operation and effect of an act which is decisive when its constitutionality is in question.

*Kansas City, F., S. & M. R. Co. vs. Botkin,*  
240 U. S. 227, 231.

However, we believe ample precedent exists to condemn the act in question. In the case of *Dent vs. West Virginia*, 129 U. S. 114, it is said:

“It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex and condition. The right may in many respects be considered as a distinguishing feature of our republican institutions. Here all vocations are open to everyone on like conditions. All may be pur-

sued as sources of livelihood, some requiring years of study and great learning for their successful prosecution. The interest, or, as it is sometimes termed, the estate acquired in them, that is, the right to continue their prosecution, is often of great value to the possessors, and cannot be arbitrarily taken from them, any more than their real or personal property can be thus taken. \* \* \* The nature and extent of the qualifications required must depend primarily upon the judgment of the State as to their necessity. If they are appropriate to the calling or profession, and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. It is only when they have no relation to such calling or profession, or are unattainable by such reasonable study and application, that they can operate to deprive one of his right to pursue a lawful vocation."

It thus appears that this court has held that a person possessing good character and sufficient qualification, has a right, of which he cannot be deprived by statute, to pursue the vocation of a physician and surgeon. This court's estimate of the necessity of regulation of that vocation is well stated in *Watson vs. Maryland*, 218 U. S. 173, 176, as follows:

"It is too well settled to require discussion at this day that the police power of the state extends to the regulation of certain trades and callings, particularly those which closely concern the public health. There is perhaps no profession more properly open to such regula-

tion than that which embraces the practitioners of medicine. Dealing, as its followers do, with the lives and health of the people, and requiring for its successful practice general education and technical skill, as well as good character, it is obviously one of those vocations where the power of the state may be exerted to see that only properly qualified persons shall undertake its responsible and difficult duties."

Suppose, now, an act prohibited any physician or surgeon from charging a fee or accepting any reward for services rendered to the same persons mentioned in the act at bar. Is it conceivable that such an act would be valid? And suppose, further, in order to meet counsel's contention that this court must presume (contrary to the admitted fact) that employers of labor will maintain employment agencies, that argument should be made to the effect that employers of labor require the services of these identical parties whom the physician and surgeon is prohibited from charging a fee, and that in order to have the benefit of their services their respective employers would pay the doctor's bill. Would not the right of a physician and surgeon to pursue a lawful vocation be illegally interfered with under such circumstances? Could it be urged by any kind of reasoning that his right was not interfered with when the reward for his labor was taken from him? Would the patient, under such circumstances, have

no cause to complain of the illegality of the act when his power to secure medical treatment was dependent upon his finding a philanthropic agency therefor, or his being compelled to wait until some employer, needing his services, would employ a physician to effect a cure of his ills, or to suffer until he, unaided, discovered a remedy for his condition?

Take another illustration: Of course, it is well known that grocers have very frequently sold goods on dishonest scales; in fact, the statutes of the various states respecting honest weights and measures leave no room for contrary presumption. It is well known in this day of imitation that substitutes of an inferior character are frequently sold to persons not supposed to know otherwise, when definite articles of superior quality are sought to be purchased. It will not do to say that that evil is not sufficiently general to call for legislative action, because, in the first place, the statutes of the various states are to the contrary, and in the second place, this court has repeatedly held that the legislature may recognize degrees of evil; and we are unaware of any instance in which this court has held, in any similar case, that the legislature was mistaken in its estimate of the generality of the evil sufficient to call for legislative

action. Suppose, further, under such circumstances, an act should be passed prohibiting the grocer from accepting or receiving any compensation for goods sold to the identical class of people mentioned in the act at bar. And suppose, again, that the act were sought to be justified by a contention that the business was not prohibited because employers of labor, needing the services of these would-be purchasers, would see to it that the grocer were paid for the necessities of life furnished to his employe. Would not the business of the grocer be prohibited when his right to reward for his labor, or compensation for the sale of his products, was prohibited? And we respectfully submit, that it would require more than a theoretical argument to convince an empty stomach that no right had been illegally interfered with.

These illustrations are precisely the case at bar. The two vocations suggested are subject to regulation under the police power quite as fully as the employment business, and if in either of the cases suggested such an act would be invalid, the act in the case at bar is likewise invalid because of the principle sought to be established by it. The day has long since passed when John Jones may be adjudged guilty of a crime for doing a certain act,

and when Thomas Smith, under identically the same circumstances, may be pronounced innocent merely because of the difference in the name.

Again referring to the bill of complaint, it must be accepted as fact that the industries and the fields of labor in the State of Washington are so diversified and, in many instances, at such remote points from transportation, that it is impossible for employes to keep in touch with the labor market or know where employment can be secured, and that they were receiving from appellants, for \$1.00 in each instance, what, but for the services of the appellants, would require a large expenditure of time and money on their part to secure. Unemployment, and the evils resulting therefrom, is one of the greatest problems in American life today. It is submitted that an act which takes away from the person seeking employment the means of securing the same, and compelling him to wander the streets, highways and fields without employment for such length of time as it may require for him, unaided, to secure the same, by means of an act which makes it an offense to assist him for compensation, is nothing less in substance than a prohibition of the employment business and of the right of the patron to avail himself of its benefits.

This court has so frequently held that the right to labor, and to make contracts respecting labor, is property and is included within the guaranty of freedom found in the 14th Amendment, that the proposition is well nigh axiomatic. It seems nothing short of plain contradiction to assert that proposition and at the same time to assert that a man may be prevented by statute from enlisting, for compensation, the assistance of another in his effort to ascertain where he can secure work. It had not been supposed that the state might lawfully prevent a man from availing himself of such assistance as will secure employment for him, coincident with his application therefor, and at a minimum of expense, and compel him to spend in many cases a substantial part of the money saved by him, and to remain unemployed for a considerable length of time, in his effort, unaided, to secure employment. That, however, is exactly what the act in the case at bar does, and, at the expense of repetition, let us remind the court that every one performing manual labor, whether executive or administrative, is included within the prohibition of the statute.

## II.

CAN THE LEGISLATURE PROHIBIT THE EMPLOYMENT  
BUSINESS, OR THE USE OF THE SERVICES FOR  
COMPENSATION OF AN EMPLOY-  
MENT AGENT.

Before considering the applicable decisions of this court, it is well to notice that the local law is such that the employment business cannot be prohibited.

In *Spokane vs. Macho*, 51 Wash. 322, the Supreme Court of the state held that in an ordinance to regulate licensed employment agencies, a section hereinafter quoted, making it a misdemeanor for the keeper of an employment agency to make wilful misrepresentations, or wilfully to deceive any person seeking employment, and to take a fee for such employment, is unconstitutional; since it is not general and impartial in its operation, but operates upon one class to the exclusion of others in respect to a penal act common to all classes of business, and exceeds the reasonable limit of police regulations.

Before considering the effect of that decision, let the court bear in mind that the City of Spokane had, by virtue of Section 11 of Article XI of the State Constitution, all the police power within the limits of the city possessed by the state itself.



In *Detamore vs. Hindley*, 83 Wash. 326, the court said:

“It is admitted that the legislature has the power to confer upon a municipality the authority to authorize the placing of these supports in the street. It is conceded that the city has sufficiently authorized them, if it has been so empowered. The one vital question, therefore, is: Has the requisite power been granted to the municipality? The answer must be found in the fundamental and statutory law of this state.

“The state constitution Sec. 11 of Article 11, provides: ‘Any county, city, town, or township, may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws.’

“This is a direct delegation of the police power as ample within its limits as that possessed by the legislature itself. It requires no legislative sanction for its exercise so long as the subject-matter is local, and the regulation reasonable and consistent with the general laws. *Odd Fellows’ Cemetery Ass’n vs. City and County of San Francisco*, 140 Cal. 226, 73 Pac. 987.”

In the case of *In re Ferguson*, 80 Wash. 102, 106, the court said:

“It is next argued that the ordinance is void because it was not enacted under any express or implied power vested in the city. Section 11 of Article 11, of the constitution of the state, confers the police power upon cities as follows:

“ ‘Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws.’

“Subdivision 21 of the statutory charters for cities of the third class confers the following power:

“ ‘To make all such ordinances, by-laws, rules, regulations and resolutions, not inconsistent with the constitution and laws of the State of Washington, as may be deemed expedient to maintain the peace, good government and welfare of the corporation and its trade, commerce and manufactures, and to do and perform any and all other acts and things necessary or proper to carry out the provisions of this chapter, and to exact and enforce within the limits of such city all other local, police, sanitary and other regulations as do not conflict with general laws.’ Rem. & Bal. Code, Sec. 7685 (P. C. 77, Sec. 323).

“In *In re Donnellan*, 49 Wash. 460, 95 Pac. 1085, we held that a statute prohibiting the keeping open of any theatre on Sunday was a valid and appropriate exercise of the police power. *If such a statute was a valid exercise of the police power on the part of the state, the enactment of such an ordinance would, for the same reason, be a valid exercise of the police power on the part of the city.* We are satisfied, therefore, that where the state has not expressly permitted theatres and shows to be opened and conducted on Sunday, the city, under its police power, has the right to regulate such shows.” (Italics ours.)

Other decisions to the same effect are:

*Malette vs. Spokane*, 77 Wash. 205, 244.

*Spokane vs. Spokane & Inland Empire R. Co.*,  
75 Wash. 651, 655.

*Tacoma vs. Boutelle*, 61 Wash. 434, 445.

*Smith vs. Spokane*, 55 Wash. 219, 220.

The statute relating to the powers of cities of the first class, of which Spokane is one, in force on the date of each of the above decisions, was Section 7507 of Rem. & Bal. Code, enacted in 1890; subdivision 36 of that section is as follows:

“36. To provide for the punishment of all disorderly conduct, and of all practices dangerous to public health or safety, and to make all regulations necessary for the preservation of public morality, health, peace, and good order within its limits, and to provide for the arrest, trial and punishment of all persons charged with violating any of the ordinances of said city; but such punishment shall in no case exceed the punishment provided by the laws of the state for misdemeanor.”

It will thus be seen that in the State of Washington cities have, within their respective limits, the same unlimited police power which the sovereign State of Washington itself possesses. Hence, if such a city cannot constitutionally prohibit the employment business, it follows axiomatically that the state is likewise powerless so to do.

In the *Macho* case, *supra*, Section 7 of the ordinance in question (that section being held unconsti-

tutional in that case) was as follows:

“Sec. 7. It shall be unlawful for any person keeping an employment office to make any wilful misrepresentations to any person seeking employment through such an office, or to wilfully deceive any person seeking employment through such office, and take a fee for such employment.”

Sections 53, 55 and subdivision 5 of Section 59 of the charter of the City of Spokane, on which the above ordinance was sought to be defended, were as follows:

“Sec. 53. To regulate or prohibit the carrying on within the corporate limits of the city, of occupations which are of such a nature as to affect the public health or good order of the city, or to disturb the public peace, and which are not prohibited by law; and to provide for the punishment,” etc.

“Sec. 55. To provide for the punishment of all disorderly conduct and of all practices dangerous to the public safety or health, and make all regulations necessary for the preservation of public morality, health, peace, and good order,” etc.

“Sec. 59, subdivision 5. To license, tax, regulate, and control hawkers, peddlers \* \* \* and all other classes of business not otherwise in this charter provided for,” etc.

In the *Macho* case, *supra*, the Supreme Court of Washington, as above stated, held that the ordinance in question was a denial of the equal protec-

tion of the law. The gist of the decision is found in the following quotation therefrom (p. 325):

“ ‘The classification must be based on some reason suggested by a difference in the situation and circumstances of the subject treated, and no arbitrary distinction between different kinds or classes of business can be sustained, the conditions being likewise similar.’ *State vs. Sheriff of Ramsay County*, 48 Minn. 236, 51 N. W. 112.

“*Under the rule just quoted, those engaged in a business lawful and orderly in itself, although subject to license and regulation, cannot be made a class upon which a penal statute shall operate to the exclusion of others; for the crime defined is not common to the business of employment agencies, but common to all, and to be sustained must include within its terms all who may be likewise guilty.* It has been held that ‘an ordinance which would make the act done by one penal and impose no penalty for the same act done under like circumstances by another, could not be sanctioned or sustained because it would be unjust and unlawful.’ *Tugman vs. Chicago*, 78 Ill. 405; *Chicago vs. Rumpff*, 45 Ill. 90, 92 Am. Dec. 196; *May vs. People*, 1 Colo. App. 157, 27 Pac. 1010; *McQuillan, Municipal Ordinances*, 193..

“While the cases cited were all upon a different state of facts, in that they sought to exempt a class within a class, yet the principle applies with undiminished force to the case at bar. This is apparent when it is remembered that it is the act with which the law is concerned, rather than the business in which one may be engaged when he commits it. It is the law that stands at the bar of this court for judgment; not the respondent. To sustain Sec.

7, it must be measured by the general welfare clauses of the charter hereinbefore quoted, and when so graduated it cannot meet the test. It makes the act of one engaged in a particular business criminal, while the same act committed by another in a different business may go unchallenged by the city. If the respondent is guilty, those aggrieved must resort to the general law of the state for a remedy. Subd. 5 of Sec. 59 can have no application here. The only question open under Sec. 7 is whether, in the exercise of its authority, the city has gone beyond the reasonable and constitutional limit of police regulation. We decide that it has done so." (Italics ours.)

If, therefore, the business of the employment agent is such that it cannot be singled out, with due regard to the equal protection clause of the respective constitutions, then it follows that the business itself cannot be prohibited. This the Supreme Court of the state has expressly decided in *In re Donnellan*, 49 Wash. 460, 464. In that case the court said:

"We are also satisfied that it is not objectionable as class legislation because, where the state has a right to *prohibit* amusements, it must necessarily follow that any particular kind of amusement may be *singled out* and *prohibited by law* and special penalties attached for a violation thereof, and all persons engaged in such amusements must comply with the law." (Italics ours.)

The *Macho* case has been cited with approval several times by the Supreme Court, and Your

Honors will observe that its force and effect has not been detracted from by the decision in the case of *State vs. Rossman*, 51 Wash. Dec. 359, 161 Pac. 349, decided December 5, 1916, and not yet officially reported. The local law of the State of Washington, therefore, does not permit the employment business to be prohibited. Therefore, if this court shall be of the opinion that the initiative in question, properly construed, does prohibit the employment business, the act must be held invalid because of the local law.

Although the state court held in *State vs. Rossman*, *supra*, that the initiative does not prohibit the employment business, the jurisdiction of this court is not affected thereby. Obviously, this court must determine that question for itself. This point is well illustrated by the unanimous decisions of this court that when contract rights are asserted in this court, Your Honors must determine, independently of the decision of the state court, whether a contract actually existed. Otherwise, it is obvious that the jurisdiction of this court might depend on the inclination of the state court.

The contention of the appellants that the employment business can be prohibited, is attempted to be supported by decisions of this court upholding acts based on the police power. In some of these

opinions appears general language which appellees cite to sustain their contention; but they have entirely overlooked a principle which is applied by all courts, namely, that general language used in an opinion must be limited to the issues formed by the pleadings.

In the case of *Cohen vs. Virginia*, 6 Wheat, 264, 399, this court said:

“It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.”

In the case of *Reinman vs. Little Rock*, 237 U. S. 171, 179, this court said:

“It is true that broad reasoning was employed; but, upon familiar principles, the opinion is to be interpreted in the light of the issue as framed by the pleadings.”

In the case of *Bailey vs. Baker Ice Machine Co.*, 239 U. S. 268, 272, this court said:

“True, in *Christie vs. Scott*, 77 Kan. 257,



94 Pac. 214, there is general language which, if taken broadly, makes against this distinction. But, according to a familiar rule (*Cohen vs. Virginia*, 6 Wheat, 264, 399, 5 L. ed. 257, 290; *Pacific Exp. Co. vs. Foley*, 46 Kan. 457, 464, 12 L. R. A. 799, 26 Am. St. Rep. 107, 26 Pac. 665) this language should be regarded as restrained by the circumstances in which it was used."

Hence, however broad the language used by the court in the cases cited by appellees, before they may be considered decisive of the case at bar it must appear that the facts in the respective cases are similar to the facts in the case at bar; and that does not appear.

Bearing this principle in mind, it will be observed that all of the cases cited by appellees in support of their contention are cases of pure regulation; that is, a prohibition of some incident to a business or calling, or compelling the doing of something incidental thereto, except four which we will mention later. In every case in which prohibition was sustained by this court, it was because of the inherent nature of the business or practices at which the act was directed. A few illustrations will suffice. Gambling may be prohibited because it is inherently wrong, because of the necessary effect of the practice upon those addicted thereto. And this, we believe, necessarily appears from this court's decision.

*Phelan vs. Virginia*, 8 How. 163.

The liquor business may be prohibited, but the reason therefor is the inherent nature and effect of intoxicating liquor, irrespective of the character of the men who engage in its sale and distribution. Even if it appeared that all persons, without exception, engaged in the manufacture, sale and distribution of intoxicating liquor, observed in the business the utmost regard for all principles of law and morality, the business would nevertheless be subject to prohibition, because of its inherent nature. This principle very plainly appears in the decision of this court in the case of *Crowley vs. Christensen*, 137 U. S. 86, 90, where it is said:

“There is in this position an assumption of a fact which does not exist, that when liquors are taken in excess the injuries are confined to the party offending. The injury, it is true, first falls upon him in his health, which the habit undermines; in his morals, which it weakens; and in the self-abasement which *it* creates. But, as *it* leads to neglect of business and waste of property and general demoralization, *it* affects those who are immediately connected with and dependent upon him. By the general concurrence of opinion of every civilized and Christian community, there are few sources of crime and misery to society equal to the dram shop, where intoxicating liquors, in small quantities, to be drunk at the time, are sold indiscriminately to all parties applying. The statistics of every

state show a greater amount of crime and misery attributable to the *use* of ardent spirits obtained at these retail liquor saloons than to any other source. The sale of such liquors in this way has therefore been, at all times, by the courts of every state, considered as the proper subject of legislative regulation. Not only may a license be exacted from the keeper of the saloon before a glass of his liquors can be disposed of, but restrictions may be imposed as to the class of persons to whom they may be sold, and the hours of the day, and the days of the week, on which the saloons may be opened. Their sale in that form may be absolutely prohibited. It is a question of public expediency and public morality, and not of federal law. The police power of the state is fully competent to regulate the business—to mitigate its evils or to suppress it entirely. There is no *inherent* right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of the state or of a citizen of the United States. As it is a *business* attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rests in the discretion of the governing authority. That authority may vest in such officers as it may deem proper the power of passing upon applications for permission to carry it on, and to issue licenses for that purpose. It is a matter of legislative will only. As in many other cases, the officers may not always exercise the power conferred upon them with wisdom or justice to the parties affected. But that is a matter which does not affect the authority of the state, or one which can be brought under the cognizance of the courts of the United States." (Italics ours.)

The same may be said with reference to prohibition of the manufacture and sale of cigarettes.

In the case of *Austin vs. Tenn.*, 179 U. S. 343, 361, this court said:

“There is doubtless fair ground for dispute as to whether the *use* of cigarettes is not hurtful to the community, and therefore it would be competent for a state, with reference to its own people, to declare, under penalties, that a cigarette should not be manufactured within its limits. No one could say that such legislation trenching upon the liberty of the citizen by preventing him from pursuing a lawful business (Italics ours.)

In the Lottery Cases, *Champion vs. Ames*, 189 U. S. 321, 355, this court said:

“In determining whether regulation may or may not under some circumstances properly take the form or have the effect of prohibition, the *nature* of the interstate traffic which it was sought by the act of May 2, 1895, to suppress cannot be overlooked. When enacting that statute Congress no doubt shared the views upon the subject of lotteries heretofore expressed by this court. In *Phalen vs. Virginia*, 8 How. 161, 168, 12 L. ed. 1030, after observing that the suppression of nuisances injurious to public health or morality is among the most important duties of government, this court said: ‘Experience has shown that the common forms of gambling are comparatively innocuous when placed in contact with the widespread pestilence of lotteries. The former are confined to a few persons and places, but the latter infests the whole community; it enters every dwelling;

reaches every class; it preys upon the hard earnings of the poor; it plunders the ignorant and simple' \* \* \*

"If a state, when considering legislation for the suppression of lotteries within its own limits, may properly take into view the evils that *inhere* in the raising of money, in that mode, why may not Congress, invested with the power to regulate commerce among the several states, provide that such commerce shall not be polluted by the carrying of lottery tickets from one state to another? \* \* \* We have said that the liberty protected by the Constitution embraces the right to be free in the enjoyment of one's faculties; 'to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper'. *Allgeyer vs. Louisiana*, 165 U. S. 578, 589, 41 L. ed. 832, 835, 17 Sup. Ct. Rep. 427, 431. But surely it will not be said to be a part of anyone's liberty, as recognized by the supreme law of the land, that he shall be allowed to introduce into commerce among the states an *element* that will be confessedly injurious to the public morals." (Italics ours.)

Similar reasoning was used by this court to sustain an ordinance prohibiting the keeping of a pool hall, in the case of *Murphy vs. California*, 225 U. S. 623, 629, where the court said:

"That the keeping of a billiard hall has a *harmful tendency* is a fact requiring no proof, and incapable of being controverted by the testimony of the plaintiff that his business was

lawfully conducted, free from gaming or anything which could affect the morality of the community or of his patrons. The fact that there had been no disorder or open violation of the law does not prevent the municipal authorities from taking notice of the *idleness and other evils which result from the maintenance* of a resort where it is the business of one to stimulate others to play beyond what is proper for *legitimate recreation.*" (Italics ours.)

The same principle applied in the Trading Stamp Cases (240 U. S. 324, 364), where it appears that this court based its decision sustaining an act requiring a prohibitive license for the privilege of using trading stamps, upon the inherent nature and effect of the same, saying, in answer to a contention that the use of trading stamps was legal and that the business of selling them could not be prohibited:

"But there may be partial or total dispute of the propositions. *And it can be urged that the reasoning upon which they are based regards the mere mechanism of the schemes alone, and does not give enough force to their influence upon conduct and habit, not enough to their insidious potentialities.* As to all of which not courts, but legislatures, may be the best judges, and, it may be, the conclusive judges" \* \* \*

"The *schemes* of complainants have no such directness and effect. They rely upon something else than the article sold. They tempt by a promise of a value greater than that article and apparently not represented in its price, and it hence may be thought that thus by an *appeal* to cupidity lure to improvidence. This may not

be called in an exact sense a 'lottery', may not be called 'gaming'; it may, however, be considered as having the *seduction and evil of such*, and whether it has may be a matter of inquiry,—a matter of inquiry and of judgment that it is finally within the power of the legislature to make." (Italics ours.)

Similar reasoning was used by this court in the second Trading Stamp Case (*Tanner vs. Little*, 240 U. S. 369, 384) where it is said:

"However, a decisive answer to the questions need not be given, for we have said, in *Rast vs. Van Deman & L. Co.*, that the 'premium system' is not one of advertising merely. It has other, and, it may be, deleterious, consequences. It does not terminate with the bringing together of seller and buyer, the profit of one and the desire of the other satisfied, the article bought and its price being equivalents. It is not so limited in its purpose or effect." (Italics ours.)

It thus appears that the Trading Stamp cases do not support counsel's contention, but that the power of the legislature to prohibit was put upon the inherent nature of that prohibited. The Trading Stamp Cases are one of the instances above mentioned, cited by appellants, in which a prohibition was sustained.

Appellees rely largely upon the case of *Powell vs. Pennsylvania*, 127 U. S. 678, in which this court held that the legislature might prohibit the manu-

facture and sale of ~~artificially colored~~ oleomargarine. Appellees, however, overlook and entirely disregard the reason which supports that *prohibition*, as well stated by the present Chief Justice in *McCray vs. United States*, 195 U. S. 27, 63, where, in considering a prohibitive tax on artificially colored oleomargarine, and in answer to a contention that the tax was an illegal prohibition of the manufacture, and therefore invalid, he said:

“As we have said, it has been conclusively settled by this court that the tendency of that *article* to deceive the public into buying it for butter is such that the states may, in the exertion of their police powers, without violating the due process clause of the 14th Amendment, absolutely *prohibit* the manufacture of the article.” (Italics ours.)

The same principle was applied in the case of *Clark Distilling Co. vs. Western Maryland R. Co.*, decided by this court January 8, 1917, in which the Chief Justice, in upholding the Webb-Kenyon Act, said:

“Before concluding, we come to consider what we deem to be arguments of inconvenience which are relied upon; that is, the dread expressed that the power by regulation to allow state prohibitions to attach to the movement of intoxicants lays the basis for subjecting interstate commerce in all articles to state control, and therefore destroys the Constitution. *The want of force in the suggested inconvenience*



becomes patent by considering the principle which, after all, dominates and controls the question here presented; that is, the subject regulated and the extreme power to which that subject may be subjected. The fact that regulations of liquor have been upheld in numberless instances which would have been repugnant to the great guaranties of the Constitution but for the enlarged right possessed by government to regulate liquor has never, that we are aware of, been taken as affording the basis for the thought that government might exert an enlarged power as to subjects to which, under the constitutional guaranties, such enlarged power could not be applied... In other words, the exceptional nature of the subject here regulated is the basis upon which the exceptional power must rest, and affords no ground for any fear that such power may be constitutionally extended to things which it may not, consistently with the guaranties of the Constitution, embrace." (Italics ours.)

In the case of *New York Central R. Co. vs. White*, decided by this court March 6, 1917, one of the reasons actuating the court to uphold the New York Compensation Act, was stated as follows:

"In the nature of things, there is more or less of a probability that the employee may lose his life through some accidental injury arising out of the employment \* \* \*" (Italics ours.)

In the case of *Mountain Timber Co. vs. Washington*, decided by this court March 6, 1917, this court, in assigning reasons sufficient to uphold the

Compulsory Workmen's Compensation Act of the State of Washington, said:

"Certainly the operation of industrial establishments that, in the ordinary course of things, *frequently and inevitably* produce disabling or mortal injuries to the human beings employed, is not a matter of wholly private concern." (Italics ours.)

Again:

"Taking the fact that *accidental injuries* are *inevitable* \* \* \*" (Italics ours.)

It thus appears that in each of those cases the court had in mind, and expressly called attention to, the inherent nature of the industries to which the act applied, and that it was that inherent nature which was persuasive of the constitutionality of the act. If there could be any doubt that when prohibition is valid it is because of the inherent nature of that at which it is directed, the doubt is set at rest by the opinion of this court in the latter case, where the court said:

"But certainly, if any *industry* involves so great a human wastage as to leave no fair profit beyond it, the state is at liberty, in the interest of the safety and welfare of its people, to prohibit *such* an industry altogether." (Italics ours.)

In the case of *Wilson vs. New*, decided by this court March 19, 1917, the principle for which we contend was given particular emphasis by the Chief

Justice during his discussion of the power of Congress to enact the Adamson Act. While the Chief Justice was there speaking of the power of Congress to regulate commerce, we believe it is accurate to say that that power is precisely the same as the power commonly known as police power possessed by the states to the extent that it has been granted to Congress by the provision of the Constitution relating to regulation of interstate commerce. The portion of the opinion referred to is as follows:

"It is equally certain that where a particular subject is within such authority, the *extent* of regulation depends on the *nature* and *character* of the *subject* and what is appropriate to its regulation. The powers possessed by government to deal with a subject are neither inordinately enlarged or greatly dwarfed because the power to regulate interstate commerce applies. This is illustrated by the difference between the much greater power of regulation which may be exerted as to *liquor* and that which may be exercised as to *flour, dry-goods, and other commodities*. It is shown by the settled doctrine sustaining the right by regulation absolutely to prohibit *lottery tickets*, and by the obvious consideration that such right to prohibit could not be applied to *pig iron, steel rails, or most of the vast body of commodities*." (Italics ours.)

Counsel also cite the case of *Booth vs. Illinois*, 184 U. S. 425, and *Otis & Gassman vs. Parker*, 187 U. S. 606. In the former case, the court sustained

an act prohibiting options to buy or sell grain or other commodities at a future time; in other words, a form of gambling, pure and simple. Even if such an option were not pure gambling, as stock exchange transactions, it had in it the same disastrous element found in the evil sought to be removed by the provision of the California constitution, voiding all contracts for sales of shares of corporate stock on margin, which provision was upheld in the case of *Otis & Gassman vs. Parker, supra*, 187 U. S. 606. That evil was stated by this court as follows:

"We cannot say that there might not be conditions of public delirium in which at least a temporary prohibition of sales on margin would be a salutary thing. Still less can we say that there might not be conditions in which it reasonably might be thought a salutary thing, even if we disagreed with the opinion. *Of course, if a man can buy on margin he can launch into a much more extended venture than where he must pay the whole price at once.* If he pays the whole price he gets the purchased article, whatever its worth may turn out to be. *But if he buys stocks on margin he may put all his property into the venture, and being unable to keep his margins good if the stock market goes down, a slight fall leaves him penniless, with nothing to represent his outlay, except that he has had the chances of a bet.* There is no doubt that purchases on margin may be and frequently are used as a means of gambling for a great gain or a loss of all one has. It is said that in California, when the Constitution was

adopted, the whole people were buying mining stocks in this way with the result of *infinite disaster*." (Italics ours.)

Appellees rely largely upon the case of *Patterson vs. The Eudoria*, 190 U. S. 169, in which this court had under consideration the constitutionality of an act of December 21, 1898 (30 Stat. at L. 755, § 3, Chapter 28 U. S. Comp. Stat. 1901, pp. 3071, 3080) prohibiting the payment of advance wages to sailors upon ships engaged in interstate commerce. The court said:

"And that the contract of a sailor for his services is subject to some restrictions was settled in *Robertson vs. Baldwin*, 165 U. S. 275, 41 L. ed. 715, 17 Sup. Ct. Rep. 326, in which Secs. 4598 and 4599, Rev. Stat. (U. S. Comp. Stat. 1901, pp. 3115, 3116), in so far as they require seamen to carry out the contracts contained in their shipping articles, were held not to be in conflict with the 13th Amendment, and in which a deprivation of personal liberty *not warranted in respect to other employees* was sustained as to sailors. We quote the following from the opinion (p. 282, L. ed. p. 718, Sup. Ct. Rep. p. 329):

"From the earliest historical period, the contract of the sailor has been treated as an exceptional one, and involving, to a certain extent, the surrender of his personal liberty during the life of the contract. Indeed, the business of navigation could scarcely be carried on without some guaranty, beyond the ordinary civil remedies upon contract, that the sailor will

not desert the ship at a critical moment, or leave her at some place where seamen are impossible to be obtained—as Malloy forcibly expresses it—‘to rot in her neglected brine’. Such desertion might involve a long delay of the vessel while the master is seeking another crew, an abandonment of the voyage, and in some cases, the safety of the ship itself. Hence, the laws of nearly all maritime nations have made provisions for securing the personal attendance of the crew on board, and for their criminal punishment for desertion or absence without leave during the life of the shipping articles.’

“If the necessities of the public justify *the enforcement of a sailor’s contract by exceptional means*, justice requires that *the rights of the sailor be in like manner protected*.” (Italics ours.)

The story of the wrongs done to sailors in the larger ports, not merely of this nation, but of the world, is an oft-told tale, and many have been the efforts to protect them against such wrongs. One of the most common means of doing these wrongs is the advancement of wages. Bad men lure them into haunts of vice, advance a little money to continue their dissipation, and, having thus acquired a partial control, and by liquor dulled their faculties, place them on board the vessel just ready to sail and most ready to return the advances. When once on shipboard, and the ship at sea, the sailor is powerless and no relief is availing. It was in order

to stop this evil, to protect the sailor, and not to restrict him of his liberty, that this statute was passed. And, while in some cases it may operate harshly, no one can doubt that the best interests of seamen as a class are preserved by such legislation."

\* \* \* \* \*

"Contracts with sailors for their services are, as we have seen, *exceptional in their character*, and may be subjected to *special restrictions* for the purpose of securing the full and safe carrying on of commerce on the water." (Italics ours.)

From the above quotation, it will be observed that the court particularly called to attention the exceptional character of services which a sailor must necessarily render, and held that exceptional duties require exceptional protection. It will be observed that that case is in no wise in point in the case at bar. The validity of that portion of the statute prohibiting charging a sailor a fee for securing him employment, was not involved, and no opinion whatever was expressed on it. Appellees say that the court did not intimate that that portion of the act was unconstitutional. That is quite true. Neither did the court intimate anything as to the validity of any of the acts of Congress other than the one prohibiting the paying of advance wages; and it might equally well be urged that the decision is to

the effect that all other acts of Congress are valid, although they were not involved or considered, merely because the court did not gratuitously hold them otherwise.

It thus appears that in each of the cases sustaining prohibitions relied on by the appellees to sustain the power of the legislature to prohibit the business and the right to employ the agent for compensation, there was, without respect to the character of men engaged in the thing prohibited, an inherent wrong or an inherent immorality or illegality, and that in no case was such prohibition sustained where that at which it was directed was lawful.

Appellees cite the case of *Noble State Bank vs. Haskell*, 219 U. S. 104, and place great reliance upon it, particularly the following portion of the opinion:

“On the contrary, we are of the opinion that it may go on from regulation to prohibition except upon such conditions as it may prescribe.”

The court will recall that this language was used with reference to the <sup>regulation of</sup> banking business by the state, and appellees contend that in the sentence quoted the court held that the banking business could be prohibited. Clearly such is not the fact. The court said that the business might be prohibited



“except upon such conditions as it (the state) may prescribe.” It is fundamental, of course, that when the court spoke of conditions, the term “reasonable” was implied, because the legislature can prescribe no unreasonable condition.

If, however, Your Honors shall not be in accord with this view, we submit that a vast distinction exists between the banking business and other forms of business. In other words, banking is a governmental function pure and simple, and being such, government might, under such regulation as it deem fit and appropriate, permit that function to be carried on by individuals or take the matter in its exclusive charge.

The court will bear in mind that the Supreme Court of Washington, in speaking of the employment business, expressly held it to be lawful and beneficial.

*Spokane vs. Macho*, 51 Wash. 322.

And as shown in our opening brief, Mr. Chas. P. Neill, then United States Commissioner of Labor, said that to legislate these agencies out of existence would be disastrous; that Mr. Wilson, now Secretary of Labor of the President's Cabinet, writing in the Outlook of February 17, 1915, speaks of the benefits

accruing from these agencies; and that Mr. Howe, writing in the Century Magazine for April, 1915, expressly calls attention to the benefits conferred by these agencies by saying that they put the jobless man in the manless job. We believe it is not stating it too strongly to say that the employment agency, honestly conducted, has been universally approved, excepting only as appears in the three affidavits in this cause.

The question before the court, therefore, is whether a lawful and legitimate business, that is, a business inherently lawful and legitimate, may be prohibited to all men. In the case of *Commonwealth vs. Perry*, 155 Mass 117, 14 L. R. A. 325, 329, the court held unconstitutional a statute prohibiting the imposition of a fine ~~on~~ the withholding of wages, or any part of the wages of an employe engaged at weaving, and in so doing said:

“The right to acquire, possess and protect property includes the right to make reasonable contracts, which shall be under the protection of the law. The manufacture of cloth is an important industry, essential to the welfare of the community. There is no reason why men should not be permitted to engage in it. Indeed, the statute before us recognizes it as a *legitimate business into which anybody may freely enter*. The right to employ weavers, and to make proper contracts with them, is there-

fore protected by our Constitution; and a *statute which forbids the making of such contracts*, or attempts to nullify them or impair the obligation of them, violates fundamental principles of right which are expressly recognized in our Constitution." (Italics ours.)

In the case of *Brazee vs. Michigan*, 241 U. S. 340, this court held that employment agencies might be *regulated*, but there is no intimation in the opinion that the business might be prohibited, and it is readily apparent that the court was careful to state that the business might be *regulated*.

In the case of *W. W. Cargill Co. vs. Minnesota*, 180 U. S. 452, 468, this court held that a statute requiring a license for the purpose of carrying on a business of warehouseman was valid, but that such license could not be required "for the purpose of forbidding a business lawful or harmless in itself," but could be required for the purpose of *regulation*. No distinction between that case and the case at bar can be based on the fact that the statute in question in the *Cargill* case might have been considered either a police act or a revenue act.

"It (the state) may carry out its policy as well in a revenue as in a police law."

*Hammond Packing Co. vs. Montana*, 233 U. S. 331.

In the case of *Murphy vs. California*, 235 U. S.

623, 628, this court expressly stated that the 14th Amendment protects the citizen in his right to engage in any lawful business, but does not prevent *regulation* thereof.

In the case of *State vs. Moore*, 113 N. C. 697, 22 L. R. A. 472, 474, the court held that the emigrant business could not be prohibited, and stated that only an inherently harmful business could be prohibited.

In the case of *State vs. Rossman*, 51 Wash. Dec. 359, the Supreme Court of the State of Washington held that the act under consideration in the case at bar did not prohibit the employment business, and thereby recognized the doctrine that an inherently lawful and legitimate business could not be prohibited.

In the case of *Merrick vs. Halsey & Co.*, decided by this court January 22, 1917, this court held that the Michigan Blue Sky Law did not prohibit the business at which it was directed, and thereby recognize the principle which we invoke, namely, a legitimate business could not be prohibited but might be so regulated that evils were made unlawful.

If our position is not sound, then how shall we reconcile the language of Mr. Justice Bradley in

*Butchers' Union et al. vs. Crescent City, etc., Company*, 111 U. S. 746, 762, in which he said that "the right to follow any of the common occupations of life, is an inalienable right." That language was cited with approval in *Allgeyer vs. Louisiana*, 165 U. S. 578, 589. In the latter case this court said that the liberty mentioned in the Fourteenth Amendment means not only the right of the citizen to be free, but, among other things, to earn his livelihood by any lawful calling. Clearly the court did not use the term "lawful" as indicating merely the absence of a prohibitory statute, because otherwise questions of constitutional law would result merely in a determination whether election machinery had actually been set in motion and the result of such election. It must follow, therefore, that the term "lawful" was used respecting the inherent nature of the calling, since otherwise it has no meaning, because clearly it could not be the former; hence there remains only the latter.

In the case of *Truax vs. Raich*, 239 U. S. 33, this court held unconstitutional an initiative provision of the constitution of Arizona compelling every employer of labor employing more than five workers to employ not less than eighty per cent qualified electors or native born citizens of the

United States or some subdivision thereof. In the course of the opinion Mr. Justice Hughes, speaking for the court, said:

“It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure.”

Among the authorities cited in support of that statement is the *Butchers' Union* case, *supra*, and the *Allgeyer* case, *supra*.

In the case of *People vs. Warden*, 157 N. Y. 116, the court said:

“It is novel legislation, indeed, that attempts to take away from all the people the right to conduct a given business because there are wrongdoers in it, from whose conduct the people suffer.”

continuing the court said:

“Nor can the contention be tolerated, that because there have been, in times past, dishonest persons engaged in the ticket-brokerage business, with the result that frauds have been perpetrated on both travelers and transportation companies, therefore the legislature can deprive every citizen engaged therein of the ‘liberty’ to further conduct such business. Stringent rules undoubtedly may be enacted to punish those who are guilty of dishonest practices in the conduct of such a business, and the machinery of the law put in motion for its

rigorous enforcement; but to cut up, root and branch, a business that may be honestly conducted, to the convenience of the public and the profit of the persons engaged in it, is beyond legislative power. If the law were otherwise, no trade, business or profession could escape destruction at the hands of the legislature if a situation should arise that would stimulate it to exercise its power, for in every field of endeavor can be found men that seek profit by fraudulent processes. Transportation tickets have been forged, it is said; so have notes, checks and bank bills. Railroad companies are no more bound to honor forged tickets than the alleged maker of a forged note is bound to pay it. An innocent person who suffers by parting with his money on a forged ticket has his remedy against the vendor just the same as has the bank that discounts a forged note. Such instances might be multiplied, but it would serve no good purpose, for it is well known that no business can be suggested through which innocent parties may not occasionally be victimized. But, because of that fact, honest men cannot be prevented from engaging in their chosen occupations."

It is inconceivable that a few dishonest men can forever damn a lawful calling to all honest men, and under all circumstances. If, however, they can, it then follows that no occupation or calling, be it whatever it may, is beyond the prohibitory power of the legislature, since it is well known that dishonest men exist in every calling and occupation known to man. It is submitted that the guaranties of the 14th Amendment do not permit such a result.

Appellees rely very largely upon the case of *Noble State Bank vs. Haskell*, 219 U. S. 104, and cite that portion of the opinion of Justice Holmes in which, speaking of the police power, he says:

“It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare.”

If we understand appellees' position, they urge that if any act is supported by prevailing public opinion all inquiry is ended and the act must be upheld. Prevailing opinion is not a *grant* of power. It is no more than a *justification* for the exercise of *existing* power; otherwise, any act adopted by the initiative must be held constitutional. And, by the same token, this court would otherwise have been unable to declare unconstitutional the initiative provision involved in the case of *Truax vs. Raich*, 239 U. S. 33.

If prevailing preponderant opinion is a *grant* of power, then, of course, it follows that upon a change of such opinion, the power ceases and laws enacted pursuant to the power, while existing, must fall, in the absence of a saving clause. We cannot resist the inquiry how, if appellees' position be sound, courts ever could determine the date when initiative measures ceased to be effective.



But suppose it were admitted, for argument, prevailing preponderant opinion might be conferred a grant of power, the inquiry would then be, what, in this case, is the prevailing preponderant opinion? Appellees, in their brief, say that at the election, at which this initiative was adopted, 162,054 votes were cast in favor of it. We find nothing to the effect in the record, and we assume, therefore, that the Honorable Attorney General has satisfied himself that this court will take judicial notice of election returns. If so, we have no quarrel with that contention, but the court will likewise judicially take notice of the fact that at that election 381,643 votes were cast and that 144,544 votes were cast against the initiative; that the vote in favor of the initiative was 42% of the total number of votes cast at the election and 52% of the number of votes cast for and against the initiative in question. On such a state of facts, it seems difficult to determine any basis of inquiry as to the state of public opinion as shown by the election.

One illustration will suffice. No one, we believe, would urge that the Adamson Law could be supported on the ground of public opinion, or at least, we submit that no one could successfully urge that the vote by which that act was passed by Con-

gress is in the least indicative of public opinion, because, of course, it is well known that the Congress and the President of the United States each were compelled to deal with a situation which, but for the passage of the Adamson Act, meant not only calamity at time of public crisis, but general financial ruin as well as hunger and want. In short, the legislative department of the government was compelled, in order to keep the great highways of commerce open, and to prevent a cessation of traffic, to yield to the demands of a handful of men. And so it is in every case; unless the court judicially knows the history of a legislative act, the adoption of an initiative, or the enactment of a statute indicates nothing whatever as to prevailing preponderant opinion.

Appellees make no contention that, aside from the votes cast in favor of the measure, anything appears to indicate preponderant prevailing opinion on this initiative in the State of Washington, nor does anything so appear. It does, however, appear that the proponents of this measure stopped not at perjury and forgery in their effort to force the adoption of the initiative in question. If it is to be sustained by preponderant public opinion throughout the United States, we respectfully submit that no basis appears for argument to sustain the act.

believers do not even contend that such an act has parallel in the history of constitutional government, nor does their brief contain anything as to state of public opinion with reference to the business of the employment agent, except that it could be regulated. No business known to man beyond police *regulation*. And if the mere fact that public opinion is to the effect, if that be a fact, that the business of the employment agent should be regulated, is sufficient to justify a *prohibition* of the business, then *every* calling and occupation is subject to prohibition, because *it is likewise* subject to police regulation.

The legislature may not, under the guise of protecting the public interest, arbitrarily interfere with private business or impose unusual and unnecessary restrictions upon lawful occupations. And must always take care that the means employed do not go beyond the necessities of the case.

*Lawton vs. Steele*, 152 U. S. 133, 137.

*House vs. Mayes*, 219 U. S. 270, 281.

*Smith vs. Texas*, 233 U. S. 630.

With this principle in view, what reason appears why the legislature should not have contented itself with prescribing regulations in the way of a license, and their revocation, etc., to keep dishonest

men out of the business? This court, in the case of *Brazee vs. Michigan*, 241 U. S. 340, upheld the Michigan Act requiring a license as a condition precedent to conducting the business, and authorizing a commissioner to enforce the law at his discretion as well as to revoke licenses for violation of the act or the rules or regulations prescribed by him. Of course, it goes without saying that quasi-judicial boards or tribunals need not conduct their proceedings with legal nicety, nor are they bound in their hearings by the rules of evidence which obtain in courts.

*State Board of Medical Examiners vs. Jordan*, 92 Wash. 234, 237.

*State Board of Medical Examiners vs. May*, 50 Wash. 498, 499.

Nor does due process of law, nor any constitutional provision, require a right of appeal. A state may grant to a tribunal the final determination of a question both of fact and law.

*Reetz vs. Michigan*, 188 U. S. 505.

*Andrews vs. Swartz*, 156 U. S. 272.

*McCane vs. Duston*, 153 U. S. 684.

It all comes to this: the legislature could accomplish everything which it is asserted it desired to accomplish, merely by requiring any one de-

ing to engage in the business to secure a license therefor, and providing that the license should be revocable upon the doing of any prohibited act. And, in view of the fact that appeal is not necessary to due process of law, and that a hearing need not be conducted according to the rules of evidence which obtain in courts, it is difficult to see how the proceeding which the state might prescribe could be lacking in summary character.

If it be contended that the state is not equipped to carry on such a department, but that it is essentially a duty pertaining to the cities or other municipal corporations in the state, then we reply that the Supreme Court of Washington has held that the state has absolute power to command the municipalities created by it, even to the extent of forcing a county in the state to issue bonds payable by taxation on the property in that county for the purpose of acquiring a site for the permanent mobilization and training of troops for the erection of a supply station.

*State ex rel. Board of County Commissioners vs. Claussen*, 53 Wash. Dec. 203, decided March 6, 1917, and not yet officially reported.

The court did not put its decision on the ground of military necessity or self-protection, but placed

it solely on the ground of state control of municipalities created by it.

That case is authority for the doctrine that municipalities created by the state are in all respects subject to its command, and the state in the exercise of its police power could command any of the municipalities within the state not only to execute provisions of an act passed by the state, but to enact constitutional legislation ample to meet any evil claimed to exist.

For the foregoing reasons, the judgment should be reversed.

Respectfully submitted,

SAMUEL H. PILES,  
EDWARD J. CANNON,  
GEORGE W. FERRIS,  
DALLAS V. HALVERSTADT,  
*Solicitors for Appellant.*

When Signed Court, U. S.

FILED

APR 30 1917

JAMES D. WAHER

CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1916.

JOE ADAMS, *et al.*,

*Appellants,*

v.

W. V. TANNER, Attorney General of the  
State of Washington, and GEORGE R.  
CRANDALL, Prosecuting Attorney of  
Spokane County, State of Washing-  
ton,

*Appellees.*

No. 273.

APPEAL FROM THE DISTRICT COURT OF  
THE UNITED STATES FOR THE EAST-  
ERN DISTRICT OF WASHINGTON.

## BRIEF OF APPELLEES

W. V. TANNER,

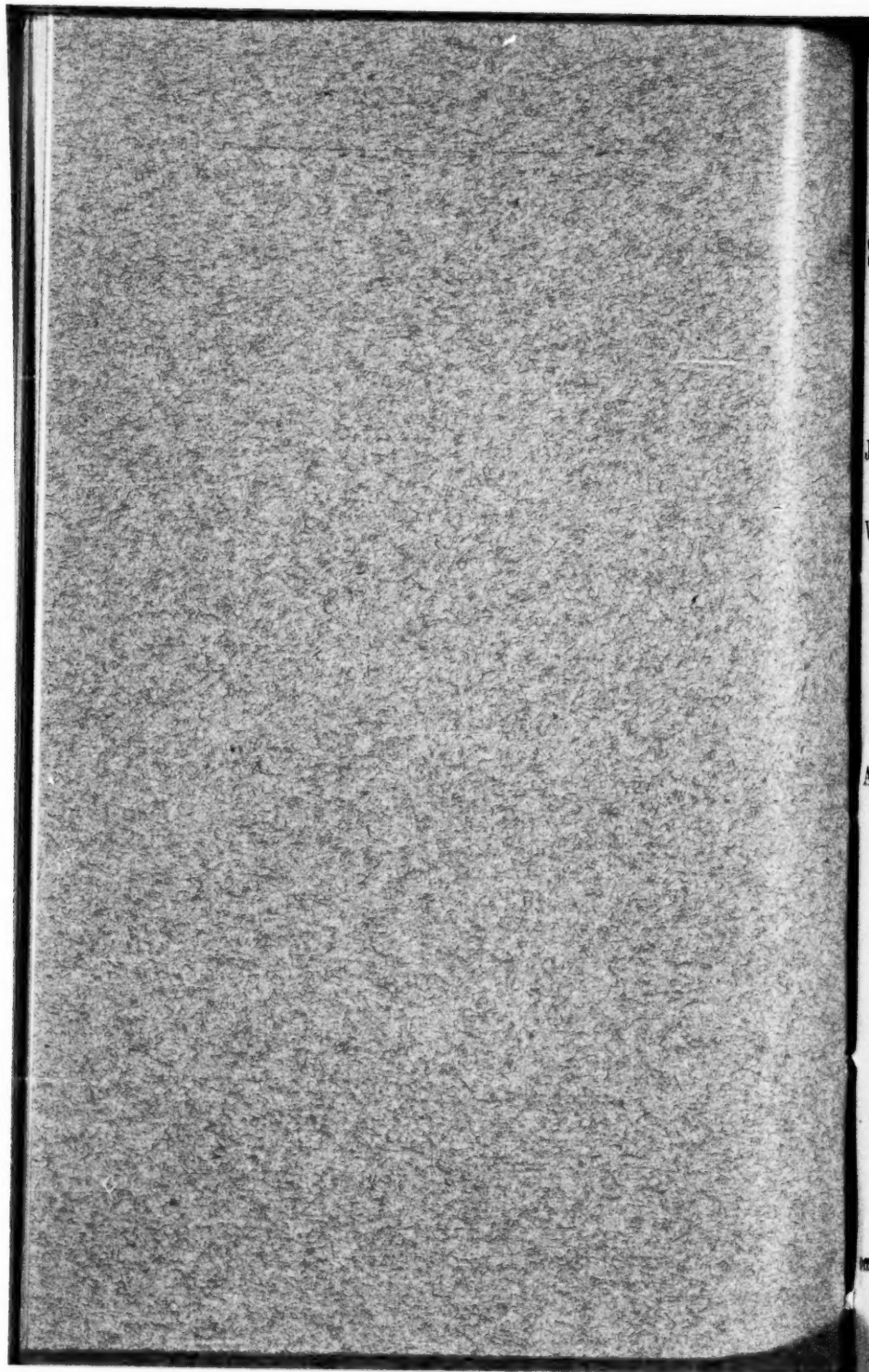
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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1916.

JOE ADAMS, <i>et al.</i> ,	<i>Appellants,</i>	} No. 273.
v.		
W. V. TANNER, Attorney General of the State of Washington, and GEORGE R. CRANDALL, Prosecuting Attorney of Spokane County, State of Washing- ton,	<i>Appellees.</i>	

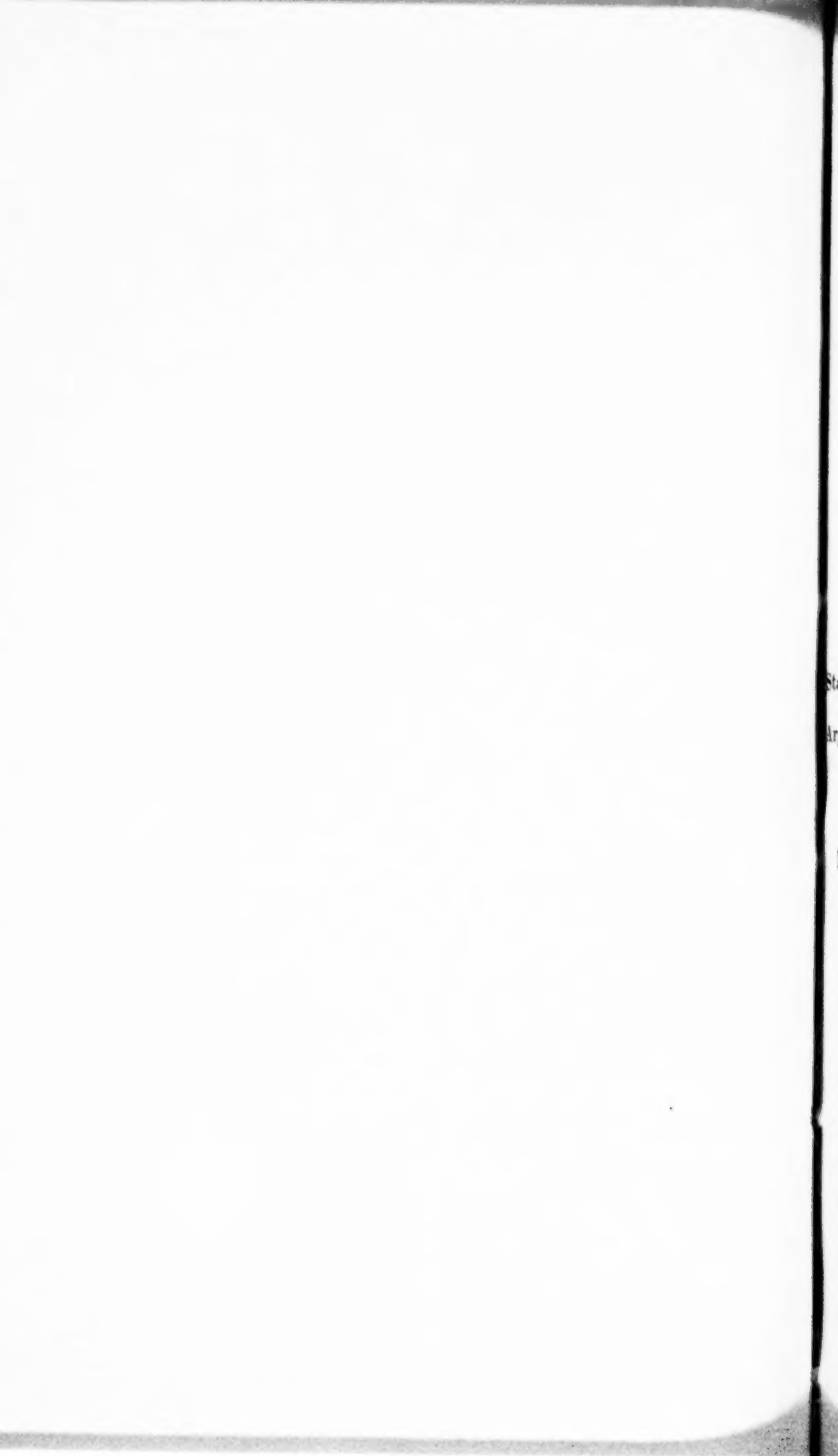
APPEAL FROM THE DISTRICT COURT OF  
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**BRIEF OF APPELLEES**

W. V. TANNER,  
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IN THE  
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v.

W. V. TANNER, Attorney General of the  
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No. 273.

APPEAL FROM THE DISTRICT COURT OF  
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TERN DISTRICT OF WASHINGTON.

**BRIEF OF APPELLEES**

STATEMENT.

This is an appeal from an order of the district court refusing to enjoin the attorney general of the State of Washington and the prosecuting attorney of Spokane county, Washington, from enforcing the provisions of chapter 1, Laws of 1915 of the State of Washington, which reads as follows:

“An act to prohibit the collection of fees for the securing of employment or furnishing information

leading thereto and fixing a penalty for violation thereof.

*Be it enacted by the People of the State of Washington:*

Section 1. The welfare of the State of Washington depends on the welfare of its workers and demands that they be protected from conditions that result in their being liable to imposition and extortion.

The State of Washington therefore exercising herein its police and sovereign power, declares that the system of collecting fees from the workers for furnishing them with employment, or with information leading thereto, results frequently in their becoming the victims of imposition and extortion and is therefore detrimental to the welfare of the state.

Sec. 2. It shall be unlawful for any employment agent, his representative, or any other person to demand or receive either directly or indirectly from any person seeking employment, or from any person on his or her behalf, any remuneration or fee whatsoever for furnishing him or her with employment or with information leading thereto.

Sec. 3. For each and every violation of any of the provisions of this act the penalty shall be a fine of not more than one hundred dollars and imprisonment for not more than thirty days."

This statute was proposed by the initiative, which is in force in Washington, and was passed by the people of that state at the general election of 1914, 162,054 votes being cast for the measure and 144,544 votes opposed.

The appellants (complainants in the district court) are employment agents engaged in doing the things forbidden by the act.



## ARGUMENT.

Before discussing the question of the validity of this statute, it is well to call the attention of the court to the construction of it by the supreme court of Washington. In the case of *Huntworth v. Tanner*, 51 Wash. 670, that court, without passing upon the question of the validity of the act, held that it only applied to the collection of fees from laborers and persons performing manual work and was not applicable to an agency engaged in the business of securing employment for teachers or professional persons.

In the case of *State v. Rossman*, 51 Wash. Decisions 359, 161 Pac. 349, decided December 5, 1916, and not yet officially reported, the same court sustained the act and further held that it applied to an agency engaged in the business of furnishing employment to stenographers and bookkeepers.

The first question presented is:

### I

IS THIS ACT WITHIN THE POLICE POWER OF THE  
STATE?

The argument advanced by appellants in support of their contention that this act is not within the police power of the state and infringes the due process clause of the Federal constitution, is sub-

stantially this: That a state cannot prohibit a business unless that business be inherently vicious, such as maintaining a house of prostitution or selling intoxicating liquor; that the business of maintaining an employment agency is not inherently vicious, but upon the contrary, useful and beneficial; that this act prohibits that business and is therefore invalid.

If the soundness of this argument depends alone upon the assumption that this statute prohibits the business of operating an employment agency, clearly it must fall, for such is not the case. The only thing which the act prohibits is the collection of fees from the employe, or, as construed by the state court, from workers seeking employment. If this be deemed a useful business which serves an economic need, the only effect of the act, it would seem, would be to throw upon the employer the burden of paying the fees. The intent of the act as appears from its face is not to prohibit this business, and such was the construction adopted by the supreme court of the state in the case of *State v. Rossman*, 51 Wash. Decisions 359, 161 Pac. 349, *supra*, where the court said (p. 365):

“It is further argued by the appellant that the act is prohibitive of the business, and therefore is unconstitutional. This contention we think, is without merit, because the act does not prohibit the business. Section 2 of the act, Laws of 1915, page 1 (Rem. 1915 Code, sec. 6565-2), makes it unlawful for any employment agent to demand or receive fees from persons seeking employment. It does not pro-

hibit the business. Fees, of course, may be charged against persons desiring to employ labor."

The court knows that if an employer of labor needs men he will pay for information regarding them.

Again, by what process of reasoning can the court say that this act does in fact prohibit the employment agency business? Must the court take judicial notice of the alleged fact that the employer will refuse to pay these fees? To do so is to violate every rule of presumption relative to the constitutionality of statutes. If this is a question of judicial notice, then we invite the court to take notice of conditions in Washington today, after this act has been in operation for a space of over two years. If it does so, it will find these agencies still doing business. The people evidently thought the act to be regulation and not prohibition, else they would in plain terms have prohibited it in its entirety. This is most forcibly shown by the preamble of the act, which declares that "the system of collecting fees from the workers for furnishing them with employment, or with information leading thereto, results frequently in their becoming the victims of imposition and extortion and is therefore detrimental to the welfare of the state." The act is regulation and nothing more.

Passing this, however, we shall assume for the sake of argument that the effect of the statute is vir-

tually to prohibit this business. If we can satisfy the court that such a prohibition is valid, then certainly the prohibition of some particular phase of the business is sustainable for the same reasons and because the greater must include the lesser.

The nature and scope of the police power of the state, when alleged to be in conflict with the fourteenth amendment to the Federal constitution, have been so often considered by this court that it is unnecessary to indulge in any long academic discussion relative thereto. For the convenience of the court, however, we shall refer to some of its leading expressions upon the subject. This court has many times held that the police power of the state extends not only to measures designed to promote the public peace, health, morals and safety, but also to those intended to promote the general welfare and prosperity.

“When one becomes a member of society, he necessarily parts with some rights or privileges which, as an individual not affected by his relations to others, he might retain. \* \* \* From this source come the police powers, which, as was said by Chief Justice Taney in *The License Cases*, 5 How. 583, ‘Are nothing more or less than the powers of government inherent in every sovereignty, that is to say, the power to govern men and things.’ Under these powers the government regulates the conduct of its citizens one towards another, and the manner in which each shall use his own property, when such regulation becomes necessary for the public good.” (Waite, C. J., in *Munn v. Illinois*, 94 U. S. 113, 124.)

"But the possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community. \* \* \*

"For the pursuit of any lawful trade or business the law imposes similar conditions. Regulations respecting them are almost infinite, varying with the nature of the business." (Field, J., in *Crowley v. Christianson*, 137 U. S. 86, 89.)

"The police power is not subject to any definite limitations, but is co-extensive with the necessities of the case and the safeguard of the public interests." (Brown, J., in *Camfield v. U. S.*, 167 U. S. 518, 524.)

"We hold that the police power of the state embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals or the public safety." (Harlan, J., in *C. B. & Q. Ry. Co. v. Illinois*, 200 U. S. 561, 592.)

The police power of the State of Washington is equally as extensive. In the case of *Karasek v. Peier*, 22 Wash. 419, 426, that court said:

"Upon the common law maxim above quoted rests, as we have seen, what is termed the police power of the state, which, in its broadest acceptance, means the general power of the state to preserve and promote the public welfare, even at the expense of private rights."

The true rule is well stated in the case of *State v. Mountain Timber Co.*, 75 Wash. 581, where it was said (p. 588):

"Having in mind the sovereignty of the state, it would be folly to define the term. To define is to

limit that which from the nature of things cannot be limited, but which is rather to be adjusted to conditions touching the common welfare, when covered by legislative enactments. The police power is to the public what the law of necessity is to the individual. It is comprehended in the maxim *salus populi suprema lex*. It is not a rule, it is an evolution."

In determining whether or not a particular act does in fact have a tendency to promote the general welfare and prosperity the court does not act upon evidence, but rather upon what may be termed the rule of "reasonable conjecture"; that is to say, if the court can conclude that a state of facts might possibly exist which would justify the statute under consideration, then the correlative presumption follows that those facts do exist and the court is bound to sustain the statute.

*Munn v. Illinois*, 94 U. S. 113, 132;

*Antoni v. Greenhow*, 17 Otto 769, 775;

*Austin v. Tennessee*, 179 U. S. 343, 361, 363;

*Otis & Gassman v. Parker*, 187 U. S. 606, 609;

*Atkin v. Kansas*, 191 U. S. 207, 222;

*M. K. & T. Ry. Co. v. May*, 194 U. S. 267, 269;

*Bacon v. Walker*, 204 U. S. 311, 317;

*Ozan Lumber Co. v. Union County Bank*, 207 U. S. 251, 255, 257;

*McLean v. Arkansas*, 211 U. S. 539, 548, 551;

*Welch v. Swazey*, 214 U. S. 91, 107;

*Southwestern Oil Co. v. Texas*, 217 U. S. 114, 126;

*Watson v. Maryland*, 218 U. S. 174, 179;

*Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61, 78;

*Barrett v. Indiana*, 229 U. S. 26;

*Tanner v. Little*, 240 U. S. 369.

In the case of *Munn v. Illinois* (*supra*), 94 U. S. 132, this court said:

"For our purposes we must assume that, if a state of facts could exist that would justify such legislation, it actually did exist when the statute now under consideration was passed. For us the question is one of power, not of expediency. If no state of circumstances could exist to justify such a statute, then we may declare this one void, because in excess of the legislative power of the state. But if it could, we must presume it did. Of the propriety of legislative interference within the scope of legislative power, the legislature is the exclusive judge." (Italics ours.)

In the case of *Otis & Gassman v. Parker* (*supra*), 187 U. S. 606, 609, this court said:

"We cannot say that there might not be conditions of public delirium in which at least a temporary prohibition of sales on margins would be a salutary thing. Still less can we say that there might not be conditions in which it reasonably might be thought a salutary thing, even if we disagreed with the opinion." (Italics ours.)

In the case of *Atkin v. Kansas* (*supra*), 191 U. S. 207, 222, this court said:

"It may be that the state, in enacting the statute, intended to give its sanction to the view, held by many, that, all things considered, the general welfare of employes, mechanics, and workmen, upon whom rest a portion of the burdens of government,

will be subserved if labor performed for eight continuous hours was taken to be a full day's work; that the restriction of a day's work to that number of hours would promote morality, improve the physical and intellectual condition of laborers and workmen, and enable them the better to discharge the duties appertaining to citizenship. *We have no occasion here to consider these questions, or to determine upon which side is the sounder reason.*" (Italics ours.)

In the case of *M. K. & T. Ry. Co. v. May* (*supra*), 194 U. S. 267, 269, 270, this court said:

"Approaching the question in this way we feel unable to say that the law before us may not have been justified by local conditions. It would have been more obviously fair to extend the regulation at least to highways. *But it may have been found, for all that we know*, that the seed of Johnson grass is dropped from the cars in such quantities as to cause special trouble. *It may be* that the neglected strips occupied by railroads afford a ground where noxious weeds especially flourish, and that whereas self-interest leads the owners of farms to keep down pests, the railroad companies have done nothing in a matter which concerns their neighbors only. *Other reasons may be imagined.* Great constitutional provisions must be administered with caution. Some play must be allowed for the joints of the machine, and it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts." (Italics ours.)

In the case of *McLean v. Arkansas* (*supra*), 211 U. S. 539, 548, 551, this court said:

"*If there existed a condition of affairs concerning which the legislature of the state, exercising its conceded right to enact laws for the protection of the health, safety, or welfare of the people, might pass*



the law, *it must be sustained*; if such action was arbitrary interference with the right to contract or carry on business, and having no just relation to the protection of the public within the scope of the legislative power, the act must fail." (Italics ours.)

In the case of *Southwestern Oil Co. v. Texas* (*supra*), 217 U. S. 114, 126, this court said:

"What were the special reasons or motives inducing the state to adopt the classification of which the oil company complains, *we do not certainly know, nor is it important that we should certainly know.*" (Italics ours.)

While, as before noted, the court does not receive evidence in determining whether or not a state of facts might exist which would justify the legislation under consideration, there are certain controlling factors which guide the court in its determination. The first factor is that the legislative power, whether it be the legislature or the people themselves acting through the initiative, having a more intimate knowledge of local needs, usages and conditions than has the court, is in the original instance the judge of the necessity for the enactment, and that although the court may differ with the legislative power as to the wisdom, policy or expediency of legislation, it will not interfere unless the legislative action be palpably arbitrary and unreasonable.

*Otis & Gassman v. Parker*, 187 U. S. 606, 609;

*Atkins v. Kansas*, 191 U. S. 207, 223;

*M. K. & T. Ry. Co. v. May*, 194 U. S. 267, 269;

*Jacobson v. Massachusetts*, 197 U. S. 11;  
*McLean v. Arkansas*, 211 U. S. 539;  
*Schmidinger v. Chicago*, 226 U. S. 578;  
*Magoun v. Illinois Trust and Savings Bank*,  
 170 U. S. 283, 293;  
*Quong Wing v. Kirkendall*, 223 U. S. 59, 62;  
*Metropolis Theater Co. v. Chicago*, 228 U. S.  
 61;  
*Patsone v. Pennsylvania*, 232 U. S. 138, 144.

In the case of *Otis & Gassman v. Parker* (*supra*), 187 U. S. 606, 609, this court said:

“It is true, no doubt, that neither a state legislature nor a state constitution can interfere arbitrarily with private business or transactions, and that the mere fact that an enactment purports to be for the protection of public safety, health, or morals, is not conclusive upon the courts.” (Citing authorities.) But general propositions do not carry us far. While the courts must exercise a judgment of their own, it is by no means true that every law is void which may seem to the judges who pass upon it *excessive, unsuited to its ostensible end, or based upon conceptions of morality with which they disagree*. Considerable latitude must be allowed for differences of view, as well as for possible peculiar conditions which this court can know but imperfectly, if at all. Otherwise a constitution, instead of embodying only relatively fundamental rules of right, as generally understood by all English speaking communities, would become the partisan of a particular set of ethical or economical opinions, which by no means are held *semper ubique et ab omnibus*.” (Italics ours.)

In the case of *Atkin v. Kansas (supra)*, 191 U. S. 207, 223, this court said:

“No evils arising from such legislation could be more far-reaching than those that might come to our system of government if the judiciary, abandoning the sphere assigned to it by the fundamental law, should enter the domain of legislation, and, upon grounds merely of *justice or reason or wisdom*, annul statutes that had received the sanction of the people’s representatives.” (Italics ours.)

In the case of *Schmidinger v. Chicago (supra)*, 226 U. S. 578, this court said:

“This court has frequently affirmed that the local authorities intrusted with the regulation of such matters, and not the courts, are primarily the judges of the necessities of local situations calling for such legislation, and the courts may only interfere with laws or ordinances passed in pursuance of the police power where they are so arbitrary as to be palpably and unmistakably in excess of any reasonable exercise of the authority conferred.”

In the case of *Metropolis Theatre Co. v. Chicago (supra)*, 228 U. S. 61, this court said:

“To be able to find fault with a law is not to demonstrate its invalidity. It may seem unjust and oppressive, yet be free from judicial interference.”

In the case of *Patson v. Pennsylvania (supra)*, 232 U. S. 138, 144, this court upheld an act prohibiting the possession of firearms by any resident unnaturalized alien. In the course of its opinion the court said:

“The question therefore narrows itself to whether this court can say that the legislature of

Pennsylvania was not warranted in assuming as its premise for the law that resident unnaturalized aliens were the peculiar source of the evil that it desired to prevent. (Citing authorities.)

“Obviously the question, so stated, is one of local experience, on which this court ought to be very slow to declare that the state legislature was wrong in its facts. (Citing authorities.) If we might trust popular speech in some states it was right; but it is enough that this court has no such knowledge of local conditions as to be able to say that it was manifestly wrong. (Citing authorities.)”

As a consequent result of this principle the correlative rule naturally follows that great weight will be given by the court to preponderant public opinion in determining whether or not any necessity exists for legislation under consideration.

In the case of *Plessy v. Ferguson*, 163 U. S. 537, 550, involving the constitutionality of a statute requiring separate railway carriages for members of the white and black races, in passing on the power of the legislature to enact the law, this court said:

“So far, then, as a conflict with the Fourteenth Amendment is concerned, the case reduces itself to the question whether the statute of Louisiana is a reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature. In determining the question of reasonableness it is at liberty to act with reference to the established usages, customs and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order.”

In the case of *Fallbrook Irrigation District v. Bradley*, 164 U. S. 112, 160, this court said:

"The people of California and the members of her legislature must in the nature of things be more familiar with the facts and circumstances which surround the subject, and with the necessities and the occasion for the irrigation of the lands than can anyone who is a stranger to her soil. This knowledge and familiarity must have their due weight with the state courts which are to pass upon the question of public use in the light of facts which surround the subject in their own state. For these reasons, while not regarding the matter as concluded by these various declarations and acts and decisions of the people and legislature and courts of California, we yet, in the consideration of the subject, accord to and treat them with very great respect, and we regard the decisions as embodying the deliberate judgment and matured thought of the courts of that state on this question."

In the case of *Otis & Gassman v. Parker*, 187 U. S. 606, 609, this court said:

"Even if the provision before us should seem to us not to have been justified by the circumstances locally existing in California at the time when it was passed, it is shown by its adoption to have expressed a deep-seated conviction on the part of the people concerned as to what that policy required. Such a deep-seated conviction is entitled to great respect."

In the case of *Atkin v. Kansas*, 191 U. S. 207, 222, this court said:

"It may be that the state, in enacting the statute, intended to give its sanction to the view, *held by many*, that, all things considered, the general welfare of employees, mechanics, and workmen, upon

whom rest a portion of the burdens of government, will be subserved if labor performed for eight consecutive hours was taken to be a full day's work."

In the case of *Jacobsen v. Massachusetts*, 199 U. S. 11, 34, this court quoted with approval the following:

"The appellant claims that vaccination does not tend to prevent smallpox, but tends to bring about other diseases, and that it does much harm with no good. It must be conceded that some laymen, both learned and unlearned, and some physicians of great skill and repute, do not believe that vaccination is a preventive of smallpox. *The common belief, however, is that it had a decided tendency to prevent the spread of this fearful disease, and to render it less dangerous to those who contract it.* While not accepted by all, it is accepted by the mass of the people, as well as by most members of the medical profession. It has been general in our state, and in most civilized nations for generations. It is generally accepted in theory, and generally applied in practice, both by the voluntary action of the people, and in obedience to the command of law. Nearly every state in the Union has statutes to encourage, or directly or indirectly to require, vaccination; and this is true of most nations of Europe. \* \* \* A common belief, like common knowledge, does not require evidence to establish its existence, but may be acted upon without proof by the legislature and the courts. \* \* \* The fact that the belief is not universal is not controlling, for there is scarcely any belief that is accepted by everyone. The possibility that the belief may be wrong, and that science may yet show it to be wrong, is not conclusive; for the legislature has the right to pass laws which, *according to the common belief of the people*, are adapted to prevent the spread of contagious diseases. In a free country, where the government is by the people, through their chosen representatives, prac-

tical legislation admits of no other standard of action, *for what the people believe is for common welfare must be accepted as tending to promote the common welfare, whether it does in fact or not.* Any other basis would conflict with the spirit of the constitution, and would sanction measures opposed to a republican form of government. While we do not decide, and cannot decide, that vaccination is a preventive of smallpox, we take judicial notice of the fact that this is the common belief of the people of the state, and, with this fact as a foundation, we hold that the statute in question is a health law, enacted in a reasonable and proper exercise of the police power. 179 N. Y. 235, 72 N. E. 97." (Italics ours.)

In the case of *Halter v. Nebraska*, 205 U. S. 34, 39, this court said:

"The importance of the questions of constitutional law thus raised will be recognized when it is remembered that more than half of the states of the Union have enacted statutes substantially similar, in their general scope, to the Nebraska statute. The fact is one of such significance as to require us to pause before reaching the conclusion that a majority of the states have, in their legislation, violated the constitution of the United States."

In the case of *Muller v. Oregon*, 208 U. S. 412, 420, this court said:

"Constitutional questions, it is true, are not settled by even a consensus of present public opinion, for it is the peculiar value of a written constitution that it places in unchanging form limitations upon legislative action, and this gives a permanence and stability to popular government which otherwise would be lacking. At the same time, when a question of fact is debated and debatable, and the extent to which a special constitutional limitation goes is affected by the truth in respect to that fact, a wide-

spread and long-continued belief concerning it is worthy of consideration."

In the case of *Noble State Bank v. Haskell*, 219 U. S. 104, this court said:

"It may be said in a general way that the police power extends to all the great public needs. *Camfield v. United States*, 167 U. S. 518. *It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare.*" (Italics ours.)

In the case of *Purity Extract & Tonic Co. v. Lynch*, 226 U. S. 192, 204, this court said:

"That the opinion is extensively held that a general prohibition of the sale of malt liquors, whether intoxicating or not, is a necessary means to the suppression of trade in intoxicants, sufficiently appears from the legislation of other states and the decision of the courts in its construction." (Citing authorities.) "We cannot say that there is no basis for this widespread conviction."

In the case of *Central Lumber Co. v. South Dakota*, 226 U. S. 157, 160, this court said:

"If the legislature shares the now prevailing belief as to what is public policy, and finds that a particular instrument of trade war is being used against that policy in certain cases, it may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses, and it may do so none the less that the forbidden act does not differ in kind from those that are allowed.  
\* \* \* That the law embodies widespread conviction appears from the decisions in other states."



Or as was said in the case of *Tanner v. Little*,  
 10 U. S. 369 (p. 385):

“Our present duty is to pass upon the statute before us, and if it has been enacted upon a belief of evils that is not arbitrary we cannot measure their content against the estimate of the legislature.”

This is but another way of stating the proposition that the law is a progressive science and will adapt itself to new conditions as they may arise.

In the case of *Holden v. Hardy*, 169 U. S. 366, 177, this court, after calling attention to acts passed by various legislatures pursuant to the police power, said:

“Of course, it is impossible to forecast the character or extent of these changes, but in view of the fact that, from the day Magna Charta was signed to the present moment, amendments to the structure of the law have been made with increasing frequency, it is impossible to suppose that they will not continue, and the law be forced to adapt itself to new conditions of society, and, particularly, to the new relations between employers and employees, as they arise.”

In the case of *Dobbins v. Los Angeles*, 195 U. S. 23, 238, this court said:

“In other words, the right to exercise the police power is a continuing one, and a business lawful to-day may be, in the future, because of the changed situation, the growth of population, or other causes, become a menace to the public health and welfare and be required to yield to the public good.”

The case of *Merrick v. Halsey & Co.*, 37 Sup. Ct. Rep. No. 7, 227, announces the same doctrine.

If this principle be applicable to acts of the state legislature, which often only, ~~express~~ <sup>theoretically</sup> the public will, certainly it is entitled to the greatest amount of consideration in the examination of acts passed by the people of a sovereign state by the use of the initiative. It is apparent that this act represents the consensus of opinion of the people of the State of Washington that the system of collecting these fees is detrimental to the public welfare and should be abolished. Bearing in mind the language approved in the *Jacobson* case, *supra*, that "what the people believe is for the common welfare, must be accepted as tending to promote the common welfare, whether it does in fact or not," it would seem that this court in this case should give controlling regard to the will of the people as thus declared. As was aptly said by counsel for this appellant upon page 91 of his brief in the case of *Tanner v. Little*, 240 U. S. 369:

"It may be stated, with little fear of contradiction, that when an act of such character is called in question, if it appears in conformity to usage, custom, or prevailing, preponderant opinion, such fact justifies the act. In other words, as time advances, and as evils appear, preponderant opinion in regard to the necessity of their regulation or absolute suppression is sufficient to justify the legislature, under its police power, so to do."

We propose now to briefly show (1) that the protection of the worker from fraud and extortion is a well recognized subject of legislative action, and (2) that this act is reasonably adapted to afford that protection.

As has already been shown, the police power of the state is and cannot in the very nature of things be a fixed or inelastic quantity, and this is particularly true with respect to legislation relating to social and economic conditions. The conditions of today may differ very materially from those of tomorrow. Changed economic conditions therefore demand correspondingly different regulative and protective legislation, and such legislation must be upheld by the courts unless it can be said beyond any doubt that it cannot under any state of facts subserve the public welfare.

The courts have quite generally recognized the self-evident fact that persons deficient in education and who are compelled to depend upon their daily or monthly wages for the support of themselves and families are by virtue of their necessities easy victims of fraud and extortion and hence proper subjects for legislative protection. These statutes have taken a wide range, but the primary purpose, viz.: the protection of the individual from his own weaknesses and from impositions against which he cannot protect himself, runs through them all.

We call attention briefly to some of the decisions of this court upon this:

In the case of *Patterson v. Eudora*, 190 U. S. 169, this court sustained an act of congress which prohibited the payment of wages in advance to any seaman. It might also be observed that the statute under consideration there contained the following clause (p. 170):

“If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be liable to a penalty of not more than one hundred dollars.”

The court will observe the remarkable similarity between the above quoted provision of this act of congress and the statute now before it. This court, in adverting to the necessity for the legislation under consideration, in order that seamen might be protected from fraud and extortion, said (p. 175):

“The story of the wrongs done to sailors in the larger ports, not merely of this nation, but of the world, is an oft-told tale, and many have been the efforts to protect them against such wrongs. One of the most common means of doing these wrongs is the advancement of wages. Bad men lure them into haunts of vice, advance a little money to continue their dissipation, and, having thus acquired a partial control, and by liquor dulled their faculties, place them on board the vessel just ready to sail and most ready to return their advances. When once on ship-board and the ship at sea, the sailor is powerless and

no relief is availing. It was in order to stop this evil, to protect the sailor, and not to restrict him of his liberty, that this statute was passed. And while in some cases it may operate harshly, no one can doubt that the best interests of the seamen as a class are preserved by such legislation."

If it was competent for congress to thus restrict the right of contract possessed by seamen in order to protect them from fraud and their own carelessness; if it was competent for the court to recognize the fact that conditions existed which called for remedial legislation of this character; then in the case at bar the people had the right to restrict the liberty of contract to this extent, in order that frauds practiced upon the needy and improvident may cease, and this court may take judicial cognizance of the existence of these conditions.

While the validity of the clause above quoted was not directly considered by this court in the *Patterson* case, *supra*, but merely that part relating to the advancement of wages to seamen, the court did not intimate that such clause was in any way unconstitutional, and the act was sustained, apparently in the entirety.

In *Knoxville Iron Co. v. Harbison*, 183 U. S. 11, this court sustained a statute which required the redemption in cash of store orders or other evidences of indebtedness issued in payment of wages, the prevention of fraud and extortion being again the motive for the statute.

This decision was reaffirmed in the recent case of *Keokee Coke Co. v. Taylor*, 234 U. S. 224, where a similar statute was sustained.

In the case of *Muller v. Oregon*, 208 U. S. 412, this court sustained a statute of Oregon which established a ten-hour day for women in certain occupations. This decision was adhered to in *Riley v. Massachusetts*, 232 U. S. 671, *Hawley v. Walker*, 232 U. S. 718, and finally in the recent cases of *Miller v. Wilson*, 236 U. S. 373, and *Bosley v. McLaughlin*, 236 U. S. 385, where a statute of California establishing an eight-hour law for women was upheld.

In the case of *McLean v. Arkansas*, 211 U. S. 539, a statute of Arkansas was sustained which made it unlawful to pay coal miners, employed at quantity rates, upon the basis of the weight of coal when screened.

A similar statute of the state of Ohio was sustained in the case of *Rail & River Coal Co. v. Yapple*, 236 U. S. 338.

In the case of *Holden v. Hardy*, 169 U. S. 366, this court sustained a statute of Utah which provided for an eight-hour day for miners and persons working underground. The court in that case quoted with approval the following excerpt from the decision of the supreme court of Utah (p. 397):

“The legislature has also recognized the fact, which the experience of legislators in many states has

corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength."

So in the present case it may be said that the people have recognized the fact that persons seeking employment are often compelled by their necessity to submit, without protest, to fraud and extortion upon the part of employment agencies who very often act in collusion with prospective employers.

In the case of *Eric Railroad Company v. Williams*, 233 U. S. 685, a statute of New York was sustained, which provided that all railroad companies should pay their employees every two weeks.

In the case of *Mutual Loan Co. v. Martell*, 222 U. S. 225, this court sustained a statute of Massachusetts which prohibited the assignment by a married man of wages to be earned in the future without the consent of his wife. That act was sustained upon the ground that the assignment of wages in such cases tended to induce extravagance, and upon the further ground that the needs of the wage earner might be taken advantage of by unscrupulous persons were such assignments allowed.

And in the case of *C. B. & Q. Railroad Company v. McGuire*, 219 U. S. 549, the court sustained a statute of Iowa which prohibited railroad companies from entering into contracts with their employees limiting liability for personal injuries, and which provided that no contract of insurance relief, benefit or endowment should bar the right of action of an injured employee. This case also recognizes the peculiar position which wage earners occupy when threatened with the loss of employment.

In the case of *Brazee v. Michigan*, 241 U. S. 340, this court sustained a statute of Michigan which provided for the licensing, bonding and regulation of private employment agencies.

In the case of *Lehon v. Atlanta*, U. S. Advance Sheets No. 4, page 71, an ordinance of the city of Atlanta was sustained which subjected private detective agencies to police supervision, provided that no person should carry on such business without being recommended by the board of police commissioners, and required them to put up a bond in the sum of one thousand dollars.

And in the recent *Trading Stamp* cases, 240 U. S. 342-369, this court held that the giving of coupons and trading stamps with the sale of merchandise might be prohibited to the end that improvident per-



sons might be protected from their own extravagance.

Instances of varying statutory enactments designed to protect the ignorant and needy which have been sustained by this court might be multiplied. The foregoing cases indicate the limits to which this court has gone in this respect.

Concluding therefore that the object of this statute as disclosed in its preamble, namely, the protection of the worker from imposition and extortion, is within the police power, the further inquiry is presented, can the court imagine the existence of a state of facts which might justify this legislation? If it can, it must presume that those facts do exist.

At the outset, it would seem that the nature of this business is such as to challenge the attention of the court. In brief, the right which these appellants contend for is the right to take from the needy, unfortunate and improvident in many cases virtually the last dollar they possess, for the right to live. If such a business be necessary, as is argued by appellant, it is necessary in the sense that the business of the loan shark and usurer is necessary, and is a sad commentary upon our present industrial system. The first principle of human existence is the preservation and perpetuation of life. Beside it all other factors sink into insignificance and are as nothing,

for upon it all things depend. To live the individual must work. It must follow therefore that the deprivation of the right to work of itself threatens the existence of the individual and those dependent upon him. The persons with whom these agencies deal therefore are of necessity largely those whose livelihood is threatened by inability to secure employment. Obviously also they are generally either ignorant, improvident or unfortunate, else they would not require the services of the agency. Equally apparent is that the prosperity of the agency will increase with the number of persons who seek work and cannot secure it except through the agency. Upon the one hand, therefore, we have the worker confronted with the greatest problem which comes to the unsuccessful individual, and upon the other hand, the agency whose prosperity depends upon a continuance of conditions which of themselves constitute a menace to the public welfare. It must follow, we think, that the two cannot be on equal ground and that the one by virtue of his misfortune an easy object of fraud or imposition which the other may choose to practice upon him.

We inquire, then, what has been the result of this system as practiced in the State of Washington? Why is it that 162,054 people of that state have reached the conclusion that this system is so per-

nicious in its effect that it should be abolished? The reasons for this, we think, are shown very clearly by the affidavits filed in the case of *Wiseman v. Tanner*, 221 Fed. 694, decided by the District Court at the same time this case was decided, which affidavits are by stipulation made a part of the record herein.

D. P. Kenyon deposed that he had been for six and one-half years examiner in the office of the labor commissioner of the city of Seattle and for over two and one-half years sole labor adjuster in that office, and as such, had exclusive charge and control over all matters relating to the investigation of complaints coming into his department relating to employment agencies. Mr. Kenyon's affidavit then continues:

"That over three-fourths of the entire time of this affiant has been consumed in the handling of such matters and in the discharging of such duties, and much time of other employes of the city in said department has thus been consumed.

"That the performance of his duties generally involves an inquiry into the complaints lodged in said department by employes, which generally necessitates a thorough investigation into the facts as disclosed either by such employes, the employment agencies or the employers of such labor, and if possible, to amicably settle and adjust such complaints without the aid of the courts.

"That during all of said time, several hundreds of such complaints have been made to said department, either directly to myself or to other employes of the City of Seattle therein, and they have personally been investigated, settled or adjusted by my-

self, and that many of such complaints have been made against some of the above named plaintiffs and that some complaints have been made against each and everyone of said plaintiffs.

“That at least seventy-five per cent. (75%) of all said complaints so made against said plaintiffs and each of them, were meritorious from the standpoint of the employees, prospective and actual, who made them, and that at least seventy-five per cent. (75%) of all complaints made to said department during all of said time, have been meritorious from the standpoint of such employees, prospective and actual, and that the wrongs and injustices incident and growing out of said seventy-five per cent. (75%) of such complaints were directly perpetrated and caused by said plaintiffs and other employment agencies operating in the City of Seattle.

“That several of said plaintiffs above named and other employment agencies operating in the City of Seattle have during said times generally resorted to many forms of deception, artifices, false representations and fraud, to, and in dealing with, such employees, for the purpose of extracting and extorting money or fees from such employees and applicants for work.

“Such false representations, wrongs and injustices consist, among other things, in statements to such employees as to the amount of wages they will get, the sanitary and other conditions in and about the camps at the places of work, the number of hours they will be required to labor each day, the price and character of board and lodging furnished by the employers, the relative distance in miles to the various places of work and the cost and character of such transportation and other matters.

“That upon a full investigation of hundreds of complaints by me during the times herein mentioned I have discovered that the above named plaintiffs and other employment agencies in said city have made such false representations and deceptive and

misleading statements as to each and all of the foregoing matters.

"That in many of the complaints lodged with said department and investigated by me, I found that a great deal of deception and fraud have been perpetrated by the plaintiffs and certain other employment agencies in the city by failing or neglecting to tell the whole truth about any or all of the foregoing conditions and in purposely, or otherwise, concealing many facts and things relative to such conditions, which, in fairness and justice, should have been clearly stated to the employees or applicants for work, and that the knowledge of many of the facts and conditions thus concealed was necessary to the applicants or prospective employees in order to determine whether or not they desired the particular jobs or work in question.

"That upon the discovery by such employees or applicants for work of such misleading, deceptive, fraudulent and false representations or the knowledge of the actual facts and conditions concealed by the employment agencies as aforesaid, such applicants had, in hundreds of cases during said time, returned to the City of Seattle and made their complaints to said plaintiffs and other employment agencies in the city by whom they were sent, and, as a general rule, by one device or another, said employment agents have put them off from time to time and delayed the matter and, among other things, have stated that they would correspond with the employer and for them to call in a few days thereafter and, as a general rule in all such cases, such employment agencies have either refused or neglected to adjust or settle any such differences or complaints, and that thereupon such applicants lodged their complaints in said city department or with your affiant personally.

"That the relationship between said department and your affiant and said plaintiffs and other employment agencies in the attempt to settle and adjust

such complaints have generally proved, during all of said time, unsatisfactory in the extreme.

“That although said employment agencies are required under the law and city ordinance of said city to secure a license and furnish a bond in which they obligate themselves and agree to carry out, in a *bona fide* spirit, all the terms and provisions of said laws, yet their attitude has generally been one of hostility, insolence and unwillingness and obstruction to the reasonable, or any enforcement, of such laws, and that all the amicable adjustments or settlements which have been made between said plaintiffs and other employment agents in the city and said department or your affiant have generally been made in the face of such attitude and conduct on their part.

“That said department or your affiant has been unable to adjust several of the complaints made by said applicants and that several cases against some of the plaintiffs herein and other employment agencies in the city have been conducted in the courts.

“That in several of said cases, the real defense and conduct of such employment agencies has been one of delaying the proceedings in the courts as long as possible for the express reason and in the belief that such delay will cause the case to be dropped because of the necessary absence of such applicants and other witnesses.

“That such applicants and witnesses are usually laboring men who are poor and without means, and by reason of such willful delay in the proceedings, are required to work either in the city or elsewhere outside of the city.

“That the actual experience, study and observation of your affiant clearly show that the natural, usual and inevitable tendency of the employment agency system as conducted in the State of Washington leads to a shortening of the length of employment.

"That the said system is based solely on the desire on the part of the employment agents to secure fees and all the money they can, and by reason of such desire and conditions, the shorter the time of employment the greater the number of jobs.

"That such desire for profit, under said system, naturally leads to collusion between the employment agencies and the foreman, superintendent or other agents of the employers, under and by virtue of which such employes are worked shorter periods of time and then discharged by such foreman, superintendent or other agent, and thereupon seek further employment in the same or other fields through the same or other employment agencies.

"That generally the applicants or such employes who are seeking work are poor and without money or other means and are unable to bear the burden of paying the fees demanded and extracted or extorted from them by such agencies.

"That all of my said experience, observation and study show such conditions obtain and substantially are of the same character and extent throughout the entire State of Washington.

"That the nature of said business and system of employment agencies is of such character that efficient regulation thereof is practically impossible and that the evils and mischiefs and the conditions set forth are practically uncontrollable under regulation.

"That the employment agencies in reality and in fact are primarily agents for and of the employers and, as a rule, the employers are amply able to pay the fees or money to the employment agencies for securing the services of employes for them, and that in justice and on any sound theory, such employers should pay to such employment agents the fees or money for securing such employes for them.

"Referring to the affidavit of the plaintiffs herein, and particularly that portion on pages 4 and

5 thereof wherein they state that in order to do business they must conduct it honestly, your affiant denies the same and each and every part thereof and states that in the State of Washington the army of prospective employes who seek jobs of the plaintiffs herein and other employment agencies is composed largely of wage earners who go from place to place and have no permanent place of abode and are largely of a migratory character, and that the applicant who seeks a job today may in two months be hundreds of miles from the city.

"Further answering that portion of said affidavit found on page 5 as to extortion and overcharging, your affiant denies the same and each and every part thereof, and states that some of the plaintiffs herein and other employment agencies in the city have been guilty of charging more than a reasonable fee in violation and defiance of the city ordinances and law.

"Further answering that portion on page 5 relative to the character of the business, your affiant denies each and every allegation therein contained and alleges that the business of said plaintiffs and other employment agencies is not beneficial and is harmful and results in all of the evils and mischiefs hereinabove referred to and tends to inefficiency of the employes and to unemployment.

"That all of the mischiefs, evils and tendencies, charges of fraud, false representation and other things herein set forth have been practiced by some of the plaintiffs in the above entitled cause." (Trans., p. 50.)

This affidavit was corroborated by that of Mr. E. P. Marsh, who deposed as follows:

"I am the President of the State Federation of Labor, an organization embracing every organized trade of the state except the Railroad Brotherhoods, and have held that position for nearly two years last



past; for five years prior to assuming said position was manager of the Everett Labor Temple, a place where men, organized and unorganized alike, drifted to constantly with reports of industrial hardships imposed upon them; during all that time I have been in contact with laboring men of all classes, skilled and unskilled; during the past two years I have been constantly traveling about the State of Washington visiting every industrial center and many of the smaller towns.

“That years ago my attention was called to the evils of private employment agencies, and it has been more forcibly brought to my attention within the last half dozen years. It is often hard to get evidence of actual fraud against these agencies that will stand court test. This is in part due to reluctance and inability of victims of employment agents to appear in court. Again, it is also due to the pseudo-fraudulent character of representations made by the agencies. I have witnessed court cases where but little doubt existed in the minds of those present that misrepresentation had been made to the workmen, but in these cases contracts signed by the workmen were so cunningly worded that they, often illiterate and mentally deficient, failed to realize that they assumed responsibility of finding positions as represented, and that usually such applicants or workers, in signing such contracts, had absolutely no understanding or knowledge as to the real meaning of the language and intent of such contract or the terms and conditions therein embodied.

“It should be borne in mind that a considerable percentage of the men patronizing employment agencies are of a helpless, despondent, drifting, aimless and poor type of men, constituting at once a bad condition socially and a distinct menace to industrial welfare of the state and society.

“That I have visited scarcely a section of this state that I have not heard stories of alleged collusion between private employment agencies and foremen,

superintendents, or other agents of employers, the system being apparently to keep men employed for a brief period of time, discharge them to make room for others, the obvious deduction being that the fee was divided between such agencies and such foremen of employers, and that 'the more men employed the bigger the split.'

"The cases of alleged injustice on the part of private employment agencies have been all too numerous and circumstantial in this state to admit of a denial that fraud has been perpetrated. I was of the opinion at one time that rigid supervision by city governments over private employment agencies would do away with the evils complained of. Experience has proven that our cities have been unable to cope with the wiley, unscrupulous private employment agent. There seems to be many ways of taking advantage of the 'down-and-outer' looking for a job that stop just short of the border line of criminal liability, and the employment shark has apparently learned them all. It is my firm conviction, based upon years of study and observation, that there is but one way to wipe out the evils complained of—that is by abolishing the system of exacting any fee whatsoever from the workmen as the price of furnishing employment. It seems to me to be a case where the innocent agent, if innocent agent there be, must suffer with the guilty that our ideals of citizenship may be upheld.

"The migratory worker is always a serious social problem; it is bad enough that he is migratory from choice due to environment and up-bringing; the evil is intensified when he becomes migratory and a bitter, society-hating man because someone, through personal greed, must fleece him early and often of his hard-earned dollars via the employment office route.

"The church, the home, and the school are the bulwarks of the nation, the foundation stones upon which society rests. The migratory worker con-

tributes to none of these, and it is society's business to find determining causes. If the system of private employment agencies as we know them to be one of these determining causes—and I am convinced that it is—for the well-being of society it should be abolished.

“The emphatic approval given by the voters of this state to the initiative measure abolishing exaction of a fee from workmen for furnishing employment while other apparently meritorious measures were defeated, would seem to indicate that public opinion has been aroused and crystallized in this state to the necessity of wiping out the paid employment agency system as the surest means of putting a stop to industrial and social injustices and abuse.

“I have read D. P. Kenyon's contraverting affidavit herein and know the contents thereof; that my state-wide experience and study, and the opportunity for observation, lead me to the conclusion that all of the statements contained in said affidavit relative to the evils, mischiefs, false-representations, deception and other conditions therein set forth are quite general throughout the state and are the natural and inevitable out-growth of the system of private employment agencies.” (Trans., p. 43.)

Likewise, Mr. A. H. Grout, secretary of the municipal civil service commission and *ex-officio* labor commissioner of Seattle, made affidavit:

“That in the latter office and capacity I have charge of the management of public employment office of the City of Seattle and supervise the enforcement of the city ordinances and law relating thereto and especially relating to the conduct of the private employment agencies in said city and I act as general supervisor over the work of Mr. D. P. Kenyon, whose controverting affidavit is on file herein.

“That I have read and know the contents of the controverting affidavit of Mr. D. P. Kenyon and that

each and every allegation, statement and thing therein set forth are, in every respect, true, and in addition to the specific matters set forth therein, I have had many similar experiences with private employment agencies and persons seeking employment from said private employment agencies in the City of Seattle to those set forth in the affidavit of D. P. Kenyon on file herein.

“That based upon my long experience in connection with said municipal labor department and my observation and study, I reached the conclusion prior to the adoption of the said initiative measure that private employment business as conducted in the City of Seattle and in the State of Washington, by reason of the many inducements and temptations to said agencies to exploit the laborers in order to get fees for giving employment was pernicious and not conducive to the welfare of said state and was subversive not only of the interests of the large laboring classes but also indirectly of all persons in said state, and I also reached the conclusion prior to the adoption of said initiative measure that the only efficient method of regulating the private employment agencies of said state was to prohibit the charging by said agencies of fees to persons seeking employment, and after consultation with other persons engaged in similar official positions to that which I hold, I find that it is the general opinion that the prohibition of the taking of fees from those seeking employment is the only efficient manner of regulating said private employment agencies and the curing and preventing of the many abuses which arise in the conducting of said businesses as heretofore practiced.” (Trans., p. 44.)

Likewise, Mr. James R. Bradford made affidavit as follows:

“That for about three (3) years last past I have been and now am the duly elected, qualified and act-

ing Corporation Counsel for the City of Seattle, said county and state, and that for about three years and a half prior to said time was an assistant Corporation Counsel in said office;

“That during all of said time said Legal Department of The City of Seattle has often been called upon to aid the Labor Commissioner of The City of Seattle, and the Labor Department, to aid in the adjustment and settlement of complaints or claims lodged in said Labor Department by employes, prospective or actual, and applicants to the plaintiffs in the above entitled cause, and other employment agencies in The City of Seattle, for work;

“That I have read and know the contents of the controverted affidavit of D. P. Kenyon on file herein; that I personally know that a good deal of time of said Legal Department during all of said period has been consumed in aiding the said Labor Department in the adjustment and settlement of such complaints, and that very much time and attention has been given by said Labor Department in the adjustment and settlement of such claims;

“That as a general rule such applicants have first made their complaints directly to the plaintiffs in the above entitled cause, and to other agencies in said city, and upon the refusal, failure or neglect of such agencies to adjust or settle such complaints, the applicants or workers have sought the assistance of said Labor Department, and in all cases where said department was unable to adjust matters, the Legal Department was called upon to assist therein;

“That during said period many of such applicants and workers made their complaints directly to said Legal Department, whereupon both of said departments have sought with said plaintiffs and their employment agencies in the city to settle and adjust such complaints;

“That during said times said employment agencies have, among others, resorted to various forms of artifices, false representations and fraud

to, and in dealing with such employes, for the purpose of extracting and extorting money and fees from such applicants; that such false representations, wrongs and injustice consist, among other things, in statements to such applicants as to the amount of wages they will secure, the sanitary and other conditions in and about the camps at the places of work, the number of hours they will be required to labor each day, the price and character of board and lodging furnished by the employers, the relative distances and miles to the various places of work, and the cost and nature of such transportation, and other similar matters." (Trans., p. 46.)

While these affidavits are not evidence that these facts actually existed, they tend to show possible reasons for the action of the legislative power. Unless the court can say that these facts cannot be true, it would seem that it cannot say that this statute does not subserve the public welfare.

Again, the people might have thought that the public welfare demanded that the cost of this service be borne by the employer, the one for whose benefit it is primarily rendered and the one most able to bear it. They might have thought that if the employer should pay these fees, men would not be sent to distant places upon the suspicion that there might be work, because there would be no pecuniary profit in the transaction to the agency. They might have been of the opinion that if the employer paid the fee, fraud and extortion would be impossible because the employer can meet the agency on equal ground and

there would be no object in sending men to distant places unless there actually be work there for which the men are fitted. Assuredly, the court cannot say that these things may not be true.

Equally emphatic is the course of legislation in the different states of the United States during the past ten years.

The employment agency business has been the subject of statutory regulation in at least twenty-six states of the Union. Citations to these statutes will be found in appendix "A" of this brief and will also be found set forth at length in U. S. Labor Bulletin No. 148, p. 2456. These regulations vary in form, but all have one primary object; to-wit, the protection of the worker from extortion. In some states the statutes merely require agencies to take out licenses to do business, and to furnish bonds to protect their patrons, ranging in amount from five hundred to five thousand dollars. In still others, and notably in Illinois, New York, Pennsylvania and Michigan, the maximum fees which may be charged are fixed by statute. In Wisconsin, all agencies are required to file a schedule of rates with the industrial commission, and are forbidden to depart from these rates under pain of criminal penalties. Many of these statutes, such as the New York and Pennsylvania acts, are elaborate in detail. The New York

act prohibits agencies from dividing fees with employers; requires the registration of all positions furnished; forbids the conduct of agencies in premises where liquor is sold, or in lodging houses, and requires such agencies to give written receipts to their patrons.

The Pennsylvania act in addition to these requirements requires all applicants for a license to accompany their applications with the affidavit of two freeholders that they are of good moral character, and further provides that all agencies must print their addresses upon their letter heads, receipts, etc.

It would serve no useful purpose to consider these statutes in greater detail. They show very clearly that the preponderant public opinion of the people of this state with respect to this business is shared in by the legislatures of many states and that all of the conditions alleged in the affidavits heretofore referred to to exist do in fact exist.

Nor are we without judicial recognition of the existence of these evils:

The Michigan statute (Act No. 301, Laws of 1913) requires the payment of license fees by agencies, the filing of a thousand-dollar surety bond, and provides a limitation upon the maximum fees which may lawfully be charged. This act was sus-



ed by the Supreme Court of Michigan in the case *People v. Brazee*, 183 Mich. 259, 149 N. W. 1053, a proper police power measure. The Michigan court, after reviewing the authorities, concluded (p. 5):

“From a careful consideration of all the authorities, we have reached the conclusion that the business is one properly subject to police regulation and control. The character of those with whom the business is likely to be conducted, in point of capacity for self-protection from fraudulent practices, is such that the legislature might very properly determine that a license system should be adopted, to the end that dishonest and disreputable persons might, in a measure, be excluded from a right to engage in the business and means afforded for the detection of fraud and the redress of wrongs. *It seems clear that the character of the business is such as to facilitate the practice of fraud upon the ignorant and credulous.*” (Italics ours.)

This case was affirmed by this court in the case *Brazee v. Michigan*, 241 U. S. 340, where it was affirmed (p. 343):

“The general nature of the business is such that unless regulated many persons may be exposed to misfortunes against which the legislature can properly protect them.”

The original Illinois act which required agencies to furnish bonds of one thousand dollars was sustained by the Supreme Court of Illinois in the case *Price v. People*, 193 Ill. 114, 61 N. E. 844. While it is true that the Illinois act in its entirety was subsequently held void in the case of *Mathews v. People*,

202 Ill. 389, 63 L. R. A. 73, it should be noted that that decision was placed upon other grounds.

Likewise in the case of *Williams v. Fears*, 173 U. S. 270, 45 L. Ed. 186, this court said (p. 275):

“It would seem, moreover, that the business itself is of such nature and importance as to justify the exercise of police power in its regulation. We are not dealing with single instances, but with a general business, and it is easy to see that if that business is not subject to regulation, the citizen may be exposed to misfortunes from which he might otherwise be legitimately protected.”

The New York statute was sustained by the unanimous opinion of the New York Court of Appeals in the case of *People ex rel. Armstrong v. Warden, etc.*, 183 N. Y. 223, 76 N. E. 11, 2 L. R. A. (N. S.) 859, where the court said (p. 227):

“The legislature had the right to take notice of the fact that such agencies are places where emigrants and ignorant people frequently resort to obtain employment and to procure information. The relations of a person so consulting an agency of this character with the managers or persons conducting it, are such as to afford great opportunities for fraud and oppression, and the statute in question was for the purpose of preventing such frauds and, probably, for the suppression of immorality.”

The Supreme Court of Minnesota, in the case of *Moore v. City of Minneapolis*, 43 Minn. 418, 45 N. W. 719, has said (p. 419):

“The business was a proper subject of police regulation and control. The nature of the business

and the character of those with whom the business is likely to be conducted, in point of intelligence, experience, and capacity for self-protection from fraudulent practices, are such that it might well be deemed necessary by the legislature, as a matter of proper police regulation, that by means of a license system, dishonest and disreputable persons should, so far as possible, be excluded from the right to engage in the business, and that the conduct of the business be so regulated as to afford means for the detection of fraudulent practices and of redress for wrongs done. The propriety of police regulations seems apparent when it is considered that, by means of such agencies, ignorant and credulous persons might easily be defrauded of their money under a mere pretense of employment to be afforded them in a distant part of the state, so that the fraud would not be discovered until the victim should have gone so far away as to be unlikely to trouble the fraudulent agent by prosecution."

It must be admitted then that the employment agency business as now conducted commonly results in fraud, imposition and extortion. Appellants argue that even if that be true, the regulation here attempted amounts to a prohibition of the business and is therefore beyond the legislative power. As we have before pointed out, we do not admit that such is the result of the act. If this business serves any useful purpose, if it is justified by any real economic need, the only result of the act will be to transfer from the employe to the employer the burden of paying these fees. If such will not be the result, then certainly the business is non-useful and parasitic

like the trading stamp business and may be abolished. The service of the employment agent is as much for the benefit of the employer as the employe if it be of any benefit at all. The concession that the employer will not pay for it is a concession that such services are of no value; that the fees extorted, like the moneys received by the trading stamp companies, constitute merely a tribute which the worker must pay to the non-producing middle man and for which he receives nothing but that which he should receive without the payment of the fee.

Be that as it may, however, we are not willing to concede that the prohibition of this business is beyond the power of the state, even if it be conceded that the business is beneficial in theory, when its effect is remembered.

We submit the true rule to be that if a business as ordinarily carried on is inimical to the public welfare, then that business may be prohibited, and this without regard to whether a detriment arises from the inherent character of the business or from the general practices commonly followed in its conduct.

This rule is most clearly exemplified by the decisions of this court in the cases of *Booth v. Illinois*, 184 U. S. 425, and *Otis v. Parker*, 187 U. S. 606. In the *Booth* case this court had before it a statute of Illinois which prohibited the giving of options to

buy or sell grain or other property at a future time. As is pointed out in the opinion of the court, this statute had been construed by the Supreme Court of Illinois in the case of *Schneider v. Turner*, 130 Ill. 28, in which case it had been held a violation of the statute to give an option for sale of railway stock. This court sustained the statute in the following language (p. 429):

“It is, however, said that the statute of the state, as interpreted by its highest court, is not directed against gambling contracts relating to the selling or buying of grain or other commodities, but against mere options to sell or buy at a future time without any settlement between the parties upon the basis of differences, and therefore involving no element of gambling. *The argument then is, that the statute directly forbids the citizen from pursuing a calling which, in itself, involves no element of immorality, and therefore by such prohibition it invades his liberty as guaranteed by the supreme law of the land. Does this conclusion follow from the premises stated? Is it true that the legislature is without power to forbid or suppress a particular kind of business, where such business properly and honestly conducted, may not, in itself, be immoral? We think not. A calling may not in itself be immoral, and yet the tendency of what is generally or ordinarily or often done in pursuing that calling may be towards that which is admittedly immoral or pernicious. If, looking at all the circumstances that attend, or which may ordinarily attend, the pursuit of a particular calling, the state thinks that certain admitted evils cannot be successfully reached unless that calling be actually prohibited, the courts cannot interfere, unless, looking through mere forms and at the substance of the matter, they can say that the statute*

enacted professedly to protect the public morals has no real or substantial relation to that object, but is a clear, unmistakable infringement of rights secured by the fundamental law." (*Italics ours.*)

The case of *Powell v. Pennsylvania*, 127 U. S. 678, also affords a striking illustration of this. In that case this court held that the legislature of Pennsylvania might lawfully prohibit the manufacture and sale of oleomargarine, not because the business was itself vicious and immoral, but because it might facilitate fraud by reason of the similarity of oleomargarine to butter. The defendant in that case offered to show that oleomargarine was in fact a nutritious and wholesome article of food. This court held such evidence properly rejected, saying (p. 685):

"Whether the manufacture of oleomargarine, or imitation butter, of the kind described in the statute, is, or may be, conducted in such a way, or with such skill and secrecy, as to baffle ordinary inspection, or whether it involves such danger to the public health as to require, for the protection of the people, the entire suppression of the business, rather than its regulation in such manner as to permit the manufacture and sale of articles of that class that do not contain noxious ingredients, are questions of fact and of public policy which belong to the legislative department to determine. And as it does not appear upon the face of the statute, or from any facts of which the court must take judicial cognizance, that it infringes rights secured by the fundamental law, the legislative determination of those questions is conclusive upon the courts. It is not a part of their

functions to conduct investigations of facts entering into questions of public policy merely, and to sustain or frustrate the legislative will, embodied in statutes, as they may happen to approve or disapprove its determination of such questions."

Further in the opinion Mr. Justice Harlan continued (p. 686):

"The legislature of Pennsylvania, upon the fullest investigation, as we must conclusively presume, and upon reasonable grounds, as must be assumed from the record, has determined that the prohibition of the sale, or offering for sale, or having in possession to sell, for purposes of food, of any article manufactured out of oleaginous substances or compounds other than those produced from unadulterated milk or cream from unadulterated milk, to take the place of butter produced from unadulterated milk or cream from unadulterated milk, will promote the public health, *and prevent frauds in the sale of such articles.* If all that can be said of this legislation is that it is unwise, *or unnecessarily oppressive to those manufacturing or selling wholesome oleomargarine,* as an article of food, their appeal must be to the legislature, *or to the ballot-box,* not to the judiciary. The latter cannot interfere without usurping powers committed to another department of the government." (Italics ours.)

Let us test counsel's theory of inherent viciousness by this decision. The court will search that decision in vain for an intimation that the business of selling oleomargarine is inherently vicious in theory. Indeed, the decision shows the contrary to be the case. The reasoning of Justice Harlan amounts to this; the sale of oleomargarine, although theoretical-

ly beneficial, may facilitate fraud in the sale of butter, therefore the business may be prohibited. The court will observe this even more clearly if it will turn to the dissenting opinion of Justice Field in that case. Upon page 698 Justice Field said:

“Here the article was healthy and nutritious, in no respect injuriously affecting the health of anyone. It was manufactured pursuant to the laws of the state. I do not therefore, think that the state could forbid its sale or use; clearly not without compensation to the owner. Regulations of its sale and restraints against its improper use undoubtedly could be made, as they may be made with respect to all kinds of property; but the prohibition of its use and sale is nothing less than confiscation.”

The court will observe that Justice Field, like counsel, overlooked the effect of the business upon the general welfare, which is the true test.

So in the present case we submit that since experience has demonstrated that the collection of these fees from needy persons leads to fraud and extortion; therefore the collection of such fees may be prohibited, just as was the oleomargarine business in the *Powell* case.

This case has never been reversed as intimated by some text writers, as appears from the decisions of this court in the cases of *McCray v. United States*, 195 U. S. 27, and *Hammond Packing Co. v. Montana*, 233 U. S. 331.



This is even more clearly illustrated by a reference to the power of the state over the business of banking. We think that it will be admitted that this business is extremely beneficial and necessary. Assuredly it cannot be said to be inherently vicious or immoral. In spite of this, however, this court in the case of *Noble State Bank v. Haskell*, 219 U. S. 104, in discussing the extent of the police power of the state over the banking business, said (p. 112):

"The question that we have decided is not much helped by propounding the further one, whether the right to engage in banking is or can be made a franchise. But as the latter question has some bearing on the former and as it will have to be considered in the following cases, if not here, we will dispose of it now. It is not answered by citing authorities for the existence of the right at common law. There are many things that a man might do at common law that the states may forbid. He might embezzle until a statute cut down his liberty. We cannot say that the public interests to which we have adverted, and others, are not sufficient to warrant the state in taking the whole business of banking under its control. *On the contrary we are of opinion that it may go on from regulation to prohibition except upon such conditions as it may prescribe.* In short, when the Oklahoma legislature declares by implication that free banking is a public danger, and that incorporation, inspection and the above described co-operation are necessary safeguards, this court certainly cannot say that it is wrong." (Italics ours.)

The court then cited with approval the case of *North Dakota v. Woodmansee*, 1 N. Dak. 246, where the Supreme Court of North Dakota sustained a

statute which prohibited all persons from doing a banking business, unless incorporated. In that case the court said (p. 247):

“But, as a matter of precedent and authority, the legislative prerogative, in the exercise of the police power in promoting the public safety, not only to regulate and restrict the business of banking, but also to grant the right to one class, and to prohibit to others, *or even to prohibit it altogether*, has never been questioned in the courts, and the legislatures of other states have frequently exercised the right of supreme control over the business.” (Italics ours.)

This decision was considered by the Supreme Court of South Dakota in the case of *State v. Scougal*, 3 S. Dak. 55, upon the same set of facts and a contrary conclusion was reached. If the court will turn to this opinion it will find exactly the same argument of “inherent viciousness” advanced that counsel have made in the case at bar. We quote from page 67 of that opinion:

“But under this power it is not competent for the state to prohibit the citizen from carrying on any trade, occupation or business, *that is not offensive to the community or injurious to society*.” (Italics ours.)

How exactly does this statement express the contention made by counsel! And indeed if counsel's theory be correct, if the state cannot prohibit a business except it be vicious or immoral, then the South Dakota court was right. This court, however,

which has the final say on these matters, has adopted the North Dakota view. It seems apparent that the South Dakota court, like counsel, applied the wrong test. In its zeal to protect the rights of the private banker it forgot the general public, just as counsel forget the worker in their zeal to preserve this feature of the employment agency business.

The fact is that the power of the state to prohibit banking except upon such terms as it may prescribe, rests upon the theory that the general public welfare demands the exercise of this power, and the question of whether or not the business of banking is beneficial or harmful is of minor importance. Why should a different test be applied when the state attempts to direct the employment agency business, a business which counsel claim to be of vast importance in the industrial world?

The right to engage in the banking business is a common law right. 1 Morse on Banks and Banking (4th ed.), sec. 13. Assuredly it is a useful business if properly conducted. If this be the true rule what right has the state to say to the individual you cannot go into this business as an individual, but you must exercise this right as an artificial entity in conjunction with others, if you are able to find any other persons. If the nature of the business is the measuring stick by which the court fixes the proper limita-

tions upon the police power of the state, then certainly, banking acts are unconstitutional and the case of *Noble State Bank v. Haskell*, 219 U. S. 104, *supra*, is unsound.

In the case of *Purity Extract and Tonic Co. v. Lynch*, 226 U. S. 192, this court held it competent for the legislature of Mississippi to prohibit the sale of all malt beverages even though they contained no alcohol and were beneficial and nutritious. In the course of its opinion in that case the court said (p. 201):

“It is also well established that, when a state exerting its recognized authority, undertakes to suppress what it is free to regard as a public evil, it may adopt such measures having reasonable relation to that end as it may deem necessary in order to make its action effective. It does not follow that because a transaction, separately considered, is innocuous, it may not be included in a prohibition the scope of which is regarded as essential in the legislative judgment to accomplish a purpose within the admitted power of the government.”

We have shown that the abolition of fraud and the protection of the worker from extortion is within the admitted police power of the state. We have shown that any transaction which tends to do those things may be prohibited. To paraphrase the language above quoted, it does not follow that because the collection of these fees, when separately consid-

ered, may be innocuous that it may not be included in this general prohibition.

This contention was in substance considered and refuted in the recent case of *Merrick v. Halsey & Co.*, 37 Sup. Ct. Rep. No. 7, 227, in which this court sustained the Blue Sky Law of Michigan. In that opinion it was said:

"It is, however, said that, assuming the statute has such purpose, the fraud referred to is not a proper object for the police power, and it is asked, 'Can the occasional fraud, that fraud which arises in the individual transaction, justify a law regulating the business of which the single transaction is a part? Or must it be fraud which is incidental to the business, a fraud which the business itself, from its character and the manner in which it is generally conducted, invites and encourages?' And, quoting from *People ex rel. Tyroler v. Warder*, 157 N. Y. 116, "'It is a novel legislation indeed, that attempts to take away from all the people the right to conduct a business because there are wrongdoers in it.'" To the latter we say the right to do business is not taken away; the other we have already answered and need only add that we cannot upon such considerations limit the power of the state. The state must adapt its legislation to evils as they appear and is not helpless because of their forms.

"*Engel v. O'Mally*, 219 U. S. 128, was not decided because fraud was incidental to the business of banking by individuals or partnerships but because fraud could be practiced in it and that hence it could be licensed. Nor was it decided in *Allen v. Riley*, 203 U. S. 347, that the transfer of patent rights was of itself illegal or that any particular transfer would be deceptive, but that some transfers might be; and so a statute of Kansas which required any person selling or offering to sell such rights to conform to cer-

tain requirements was declared valid. Nor did we hesitate to hold valid the regulation of the business of employment agencies. It was a lawful business and would not in instances be injuriously conducted; *but in instances it might be, and because it might be, with injurious consequences, its regulation was provided.* This court sustained the regulation and the condition that it was to be enforced according to the legal discretion of a commissioner. *Brazee v. Michigan*, 241 U. S. 340. See also *Brodnax v. Missouri*, 219 U. S. 285. Other cases might be cited of similar import." (Italics ours.)

Likewise in the case of *Rast v. Van Deman & Lewis*, 240 U. S. 342, one of the trading stamp cases, this court in referring to the numerous decisions holding trading stamp legislation invalid, said (p. 364):

"The foundation of all of them is that the schemes detailed are based on an inviolable right, that they are but the exercise of a personal liberty secured by the Constitution of the United States and distinguished from other lawful exercise of business contracts and activity by a method of advertising and lawful inducements to an increased custom and that in them there is no element of chance or anything detrimental to the public welfare. But there may be partial or total dispute of the propositions. And it can be urged that the reasoning upon which they are based regards the mere mechanism of the schemes alone and does not give enough force to their influence upon conduct and habit, not enough to their insidious potentialities. As to all of which not courts but legislatures may be the best judges and, it may be, the conclusive judges.

"This may be illustrated. A lottery of itself is not wrong, may be fairer, having less of overreaching in it, than many of the commercial transactions that

the Constitution protects. All participants in it have an equal chance; there is no admonishing caveat of one against the other. And at one time it was lawful. *It came to be condemned by experience of its evil influence and effects. It is trite to say that practices harmless of themselves may, from circumstances, become the source of evil or may have evil tendency. Murphy v. California, 225 U. S. 623.*" (Italics ours.)

We cannot sum up the matter better than to quote from page 142 of the brief filed by learned counsel in the case of *Tanner v. Little*, 240 U. S. 369, where it was said:

"It cannot be seriously disputed that a court falls into serious error when it adjudges that a business is beyond legislative interference because the business, considered alone and abstractly, may be legal without considering the fact that evils ordinarily attend or ordinarily follow its prosecution, and that they are of such character and effect as to warrant the legislature in prohibiting the business in order to prevent such evils. The complex conditions of society have frequently called forth remedial, regulative and prohibitory legislation, which has been upheld by this court when, if a scholastic decision only on the constitutionality of such acts had been rendered, they would unquestionably have been held void. The courts holding the trading stamp and coupon business beyond legislative interference have pressed constitutional provisions to a drily logical extreme and have overlooked the fact that they must consider all such laws in the light of the judgment which another department of government is entitled to indulge in, particularly in view of the fact that such other department is charged by the constitution with the duty of exercising that judgment. Such courts have also overlooked the fact that in deciding great constitutional questions some play must

be allowed for the joints of the machine; that the legislatures in passing such acts are compelled to deal with a condition of affairs as it actually exists, and that what is wise or best is not often easily discernible, and that according to the numerous decisions of this court such acts must be upheld unless it clearly and unmistakably appears that they are wholly unreasonable, utterly arbitrary, and palpably beyond the power of the legislature."

We find nothing in the case of *Murphy v. California*, 225 U. S. 623, contrary to this. This court there said that a non-useful business might be prohibited according to the manner in which it was conducted. The court did not say that a business theoretically useful in its inception, always continued so in the eyes of the law, notwithstanding the fact that as commonly practiced it was detrimental to the public welfare. The court did not define the term non-useful business, nor did it say that it was bound by the theoretical nature of the business. Indeed, at the bottom of page 629 of that opinion, the court sets forth at length the language used in the *Booth* case to the effect that a harmless business may be prohibited where the tendency of what is ordinarily done in the business "may be towards that which is admittedly immoral or pernicious."

Furthermore, it may be observed that the court there said that a municipality might prohibit an inherently vicious business. The court held that a mu-



municipality might prohibit a non-useful business. The court neither held nor said that the legislature might not prohibit a theoretically useful business whose general effect is detrimental, and the contrary idea is expressly shown by the quotation from the *Booth* case.

This court then is committed to the rule that a business or calling may be prohibited when that which is ordinarily done in that calling may have an evil tendency. In the light of these affidavits, in the light of the decisions of the state courts and the course of legislation in the different states, can this court say that the admitted evils which attend this phase of the employment agency business are not such as to justify the prohibition of the collection of these fees even though the effect of such prohibition be to destroy the business? If the fact that oleomargarine is sometimes sold as butter, or beer sold as near beer, or options to purchase stock or other commodities used for gambling purposes, is sufficient to justify the destruction of these businesses, as was held in the *Powell*, *Lynch* and *Booth* cases, *supra*, then certainly the fact that it is a common practice of employment agencies to take advantage of the needs and necessities of those in distress, to send men to jobs which do not exist or for which they are wholly unfitted, to misrepresent sanitary and living

conditions at places of work, and to plot with the agents of employers to have men frequently discharged in order that the agencies may receive more fees, is sufficient to justify the state in abolishing such a system.

Again, appellant admits that a business inherently vicious or non-useful may be prohibited. How is the term "inherently vicious" to be defined? The court must do it by the exercise of its judicial notice, and as it has often said, there is no better guide for that notice than preponderant public opinion. The court must presume that 162,054 people who voted for this measure were of the opinion that this phase of the business is inherently vicious, for assuredly it will not presume that the voters arbitrarily elected to abolish a calling which contained in it no element of harm. An innocent occupation does not without some cause incur the enmity of 162,054 supposedly reasonable men and women. Neither will it do for the court to say that it does not agree with the people. As was said in the case of *Otis v. Parker*, 187 U. S. 606 (p. 609):

"No court would declare a usury law unconstitutional even if every member of it believed that Jeremy Bentham had said the last word upon that subject and had shown for all time that such laws did more harm than good. The Sunday laws, no doubt, would be sustained by a bench of judges, even

if every one of them thought it superstitious to make any day holy."

The court must say that the people could not possibly have been correct in their views with respect to this business, before it may declare the act void. It is not sufficient for the court to say that the people might have been mistaken. As was said in the case of *Jacobsen v. Massachusetts*, 197 U. S. 11, quoting from a New York decision (p. 35):

"The possibility that the belief may be wrong, and that science may yet show it to be wrong, is not conclusive; for the legislature has the right to pass laws which, according to the common belief of the people, are adapted to prevent the spread of contagious diseases. In a free country, where the government is by the people, through their chosen representatives, practical legislation admits of no other standard of action, for what the people believe is for common welfare must be accepted as intending to promote the common welfare, whether it does in fact or not."

Even if it be conceded that this phase of the business is not inherently vicious, how can the court say that it is not non-useful? While it may be beneficial to some particular individuals, or in specific cases, economically it is certainly non-useful, if not vicious, because it compels the needy and unfortunate to pay for that which they are entitled to without fee or price, *i. e.*, the right to work. If it be legitimate in any sense, it is legitimate only when consid-

ered as a part of the expense of the employer in prosecuting his industry, and if this be so, why is it not competent to place the burden upon that employer, who is the real beneficiary? Viewed from this angle the situation is not materially different from that presented to this court in the workmen's compensation cases, just decided and not yet officially reported.

In the case of *New York Central Railroad Company v. White*, involving the validity of the New York act, this court, after adverting to the fact that loss by accident is inevitable in the prosecution of hazardous employments, said:

"This is a loss arising out of the business, and however it may be charged up, is an expense of the operation, as truly as the cost of repairing broken machinery or any other expense that ordinarily is paid by the employer. Who is to bear the charge? It is plain that, on grounds of natural justice, it is not unreasonable for the state, while relieving the employer from responsibility for damages measured by common law standards and payable in cases where he or those for whose conduct he is answerable are found to be at fault, to require him to contribute a reasonable amount, and according to a reasonable and definite scale, by way of compensation for the loss of earning power incurred in the common enterprise, irrespective of the question of negligence, instead of leaving the entire loss to rest where it may chance to fall, that is, upon the injured employee or his dependents."

Likewise in the case of *Mountain Timber Company v. Washington*, this court, in sustaining the

Washington act which provided for compulsory industrial insurance by employers by enforced contributions to an insurance fund, said:

"We are clearly of the opinion that a state, in the exercise of its power to pass such legislation as reasonably is deemed to be necessary to promote the health, safety, and general welfare of its people, may regulate the carrying on of industrial occupations that frequently and inevitably produce personal injuries and disability with consequent loss of earning power among the men and women employed, and, occasionally, loss of life of those who have wives and children or other relations dependent upon them for support, and may require that these human losses shall be charged against the industry, either directly, as is done in the case of the act sustained in the *N. Y. Central R. R. Co. v. White*, *supra*, or by publicly administering the compensation and distributing the cost among the industries affected by means of a reasonable system of occupation taxes."

If the services of the employment agent be necessary to the prosecution of industry, the only effect of this act will be to transfer the burden of paying for these services from the employee to the employer, just as in the workmen's compensation acts the effect was to transfer the burden of industrial accidents to the employer. It was pointed out as supporting the New York act that under the old system of compensation the injured workman was left to bear the greater burden of industrial loss, which, because of his limited income, he was unable to sustain; that litigation is costly and tedious, encourag-

ing corrupt practices and arousing antagonisms between employer and employees, to the consequent public detriment.

Likewise in the case at bar we have shown by these affidavits and by reference to the statutes of other states that the effect of this system as now practiced is to impose a burden incident to the business upon a class not able to bear it, and further to produce fraud, imposition and extortion upon that class. If it is competent to transfer that burden to the industry in the one case, we see no reason why the same thing cannot be done in the other. The difference in fact would not appear to constitute a difference in law or call for a different result.

This act may be sustained for still another reason, and that is the public nature of the business. In the case of *Noble State Bank v. Haskell*, 219 U. S. 104, *supra*, the court, in referring to the business of banking and the power of the state to regulate it, said (p. 112):

“We cannot say that the public interests to which we have adverted, and others, are not sufficient to warrant the state in taking the whole business of banking under its control. On the contrary we are of opinion that it may go on from regulation to prohibition except upon such conditions as it may prescribe.”

The argument which appellants make with respect to the evils of unemployment and the impor-

tance of a rational solution of this problem is of itself an argument in favor of this act because a business which so directly affects the general public in this respect cannot be considered a private undertaking like that of the grocer but must rather be recognized as similar to that of banking, which the court said might be prohibited except upon such terms as the state might prescribe. The public nature of this business is testified to by the fact that in almost every city of any considerable size in the United States free employment agencies are now maintained at the general public expense.

In the states of Colorado, Connecticut, Illinois, Indiana, Kansas, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Ohio, Oklahoma, Rhode Island, South Dakota, West Virginia, Wisconsin, and in the Philippine Islands, the statutes expressly provide for free employment agencies, to be maintained either at the expense of the state at large or of the various municipalities in the state. (U. S. Labor Bulletin No. 148.) Great Britain also, by the Labor Exchange act of 1909, established a system of free employment agencies maintained at the public expense. This system has become so general that in 1916 there were 390 such exchanges in the United Kingdom. (U. S. Labor Bulletin No. 206.) In the states of Colorado, Kansas, Indiana, Michi-

gan, New Jersey, New York, Ohio, Oklahoma, Utah and Wisconsin, and in the District of Columbia, the maximum fee which may be charged by private agencies is fixed by statute. These facts clearly show that the business of furnishing employment to the unemployed has so direct a relation to the public welfare as to make it a public business just as much as that of a common carrier or a banker.

There is not a great deal of logical distinction between the use of public moneys in the maintenance of free employment agencies and the act here under consideration. The one is as much an attack upon the business as is the other, and indeed, more so, because it relieves the employer from paying these fees. The only difference is that the one does indirectly what the other does directly. Yet no one, we apprehend, would deny the power of the state to maintain a free employment agency.

This court recognized the public nature of this business in the case of *Brazee v. Michigan*, 241 U. S. 340, when it held that private employment agencies might be required to take out licenses and put up a bond. If the legislative experience of other states and the language of the courts be any criterion of existing facts, it would seem that this business does not differ from that of banking in so far as the exercise over it of the police power by a sovereign state is con-



cerned. If this be true, then to paraphrase the language in the *Noble* case, *supra*, the state may prohibit it except upon such terms as it may deem proper.

This act is simply an attempt to cure a feature of the business which the experience of years has demonstrated to constitute an evil, *i. e.*, the collection of these fees from those who cannot afford to pay them and who cannot protect themselves. We shall not attempt to demonstrate by any species of logic that this act is wise or expedient, although it might be said that its effect in Washington has been beneficial. It may perhaps appear to the court that the remedy is perhaps too drastic. In any event, if there is an evil here and if the court cannot say that this act might not destroy that evil, it must sustain the act. In the light of the possible facts to which we have called the court's attention, it is submitted that the court cannot judicially know that the people of Washington were mistaken and that the public welfare of that state cannot be subserved by this legislation. The act is within the police power of the state.

## II

### THIS ACT IS NOT DISCRIMINATORY.

It is further contended by counsel for appellant that this act is arbitrary and unreasonable and denies to appellants the equal protection of the laws.

This contention, we think, is based upon a misapprehension of the scope of the statute and the right protected by this clause of the Federal constitution. This court has said many times that a statute need not have indiscriminate operations on persons merely as such, but may operate on persons according to their relation, and that the fourteenth amendment does not interfere by creating a fictitious equality where there is a real difference.

*Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283-293;

*Quong Wing v. Kirkendall*, 223 U. S. 59-62;

*Mutual Loan Co. v. Martell*, 222 U. S. 225;

*Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61;

*Barrett v. Indiana*, 229 U. S. 26;

*Jeffry Manufacturing Co. v. Blagg*, 235 U. S. 57;

*Metropolis Theatre Co. v. Chicago*, 228 U. S. 61;

*Tanner v. Little*, 240 U. S. 369-382;

*Central Lumber Co. v. South Dakota*, 226 U. S. 157;

*Patson v. Pennsylvania*, 232 U. S. 138.

This statute is much easier to sustain than were many of the acts considered in the cases just cited because it applies to all persons who receive fees for furnishing employment to workers and does not attempt to create classes among such persons. We are

unable to see therefore how it would have been possible to have made the act more general in its application.

Appellant makes substantially this argument: That because the alleged evil at which the statute is directed, *i. e.*, imposition and extortion, is not common to employment agencies alone, but is found in other businesses, then it is not competent to prohibit such practices unless the prohibition be universal. This argument, we think, is its own refutation. The fallacy of it may be shown by applying it to some of the decisions of this court. For instance, in the case of *Keokee Coal Co. v. Taylor*, 234 U. S. 224, this court sustained a statute which prohibited those engaged in certain specified occupations from issuing store orders to employes. The object of that act was the prevention of fraud. Clearly fraud may be consummated by the issuance of store orders in industries other than those specified in the act. This court held that it was not necessary for the legislature in one statute to reach every possible business where fraud might be consummated by the issuance of such orders, saying (p. 227):

“But while there are differences of opinion as to the degree and kind of discrimination permitted by the fourteenth amendment, it is established by repeated decisions that a statute aimed at what is deemed an evil, and hitting it presumably where experience shows it to be most felt, is not to be upset

by thinking up and enumerating other instances to which it might have been applied equally well, so far as the court can see. That is for the legislature to judge unless the case is very clear."

In the case of *Williams v. Fears*, 179 U. S. 270, this court sustained a statute of Georgia which provided for a license tax upon all persons engaged in the business of hiring laborers to be employed beyond the limits of the state, which did not apply to local agencies. Referring to the question of discrimination, this court there said (p. 276):

"We are unable to say that such a discrimination, if it existed, did not rest on reasonable grounds, and was not within the discretion of the state legislature."

The present act applies alike to all agencies and upon this phase of the case is less subject to attack than was the Georgia statute.

In the case of *Miller v. Wilson*, 236 U. S. 373, this court sustained a statute of California providing for an eight-hour day for women and exempting from its operation women employed in "harvesting, curing, canning, or drying of any variety of perishable fruit or vegetables." In considering the contention that this exemption invalidated the act, Mr. Justice Hughes said (p. 383):

"The contention as to the various omissions which are noted in the objections here urged ignores the well-established principle that the legislature is

not bound, in order to support the constitutional validity of its regulation, to extend it to all cases which it might possibly reach. Dealing with practical exigencies, the legislature may be guided by experience. *Patson v. Pennsylvania*, 232 U. S. 138, 144, 58 L. Ed. 539, 543, 34 Sup. Ct. Rep. 281. It is free to recognize degrees of harm, and it may confine its restrictions to those classes of cases where the need is deemed to be clearest. As has been said, it may 'proceed cautiously, step by step,' and 'if an evil is specially experienced in a particular branch of business' it is not necessary that the prohibition 'should be couched in all-embracing terms.' *Carroll v. Greenwich Ins. Co.*, 199 U. S. 401, 50 L. Ed. 246, 250, 26 Sup. Ct. Rep. 66. If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied. *Keokee Consol. Coke Co. v. Taylor*, 234 U. S. 224, 227, 58 L. Ed. 1288, 1289, 34 Sup. Ct. Rep. 856."

The case of *Carroll v. Greenwich Insurance Co.*, 199 U. S. 401, is an absolute and irrefutable answer to this argument. In that case the court had before it a statute of Iowa which made it unlawful for fire insurance companies to enter into agreements in relation to rates and other matters, but which did not apply to other companies. The contention was there made that inasmuch as the object of the statute was to facilitate competition and that since the evil aimed at was monopoly, the legislature was without power to single out any particular business when the evil was one common to many businesses. The court answered this in the following language (p. 411):

“Again, if an evil is specially experienced in a particular branch of business, the constitution embodies no prohibition of laws confined to the evil, or doctrinaire requirement that they should be couched in all-embracing terms. It does not forbid the cautious advance, step by step, and the distrust of generalities which sometimes have been the weakness, but often the strength, of English legislation. \* \* \* And if this is true, then, in view of the possible teachings to be drawn from a practical knowledge of the business concerned, it is proper that the courts should be very cautious in condemning what legislatures have approved.”

The case of *International Harvester Company v. Missouri*, 234 U. S. 199, is equally applicable. In that case the court had before it an anti-trust statute of Missouri which prohibited combinations of persons and corporations dealing in commodities, but which exempted combinations of persons engaged in labor pursuits. It was argued in that case that since the object of the statute was to prevent monopoly, that the evil aimed at was as much an element present in combinations of persons engaged in labor pursuits as in combinations of those dealing in commodities. From this the conclusion was drawn that the act was discriminatory. The court there quoting from the *Carroll* case, *supra*, said (p. 212):

“We might leave the discussion with that and the other cases. They decide that we are helped little in determining the legality of a legislative classification by making broad generalizations, and it is for a broad generalization that plaintiff in error contends—indeed, a generalization which includes all

the activities and occupations of life, and there is an enumeration of wage earners in emphasis of the discrimination in which manufacturers and sellers are singled out from all others. The contention is deceptive, and yet it is earnestly urged in various ways which it would extend this opinion too much to detail. *'In dealing with restraints of trade,' it is said, 'the proper basis of classification is obviously neither in commodities nor services, nor in persons, but in restraints.'* A law, to be valid, therefore, is the inflexible deduction, cannot distinguish between *'restraints,'* but must apply to all restraints, whatever their degree or effect or purpose, and that because the Missouri statute has not this universal operation it offends against the equality required by the fourteenth amendment." (Italics ours.)

This statement of the contention made in that case is an exact statement of the contention made by counsel in the present case, and this may be shown by paraphrasing this language as follows:

"In dealing with frauds the proper basis of classification is obviously neither in the methods pursued, nor in persons, but in frauds. A law, to be valid, therefore, is the inflexible deduction, cannot distinguish between frauds, but must apply to all frauds, whatever their degree or effect or purpose, and that because the Washington statute has not this universal operation it offends against the equality required by the fourteenth amendment."

There is absolutely no difference in principle between the contention advanced in that case and the contention made here. The court held this unsound and said in conclusion (p. 215):

"Whether the Missouri statute should have set its condemnation on restraints generally, prohibiting

combined action for any purpose and to everybody, or confined it as the statute does to manufacturers and vendors of articles and permitting it to purchasers of such articles; prohibiting it to sellers of commodities and permitting it to sellers of services, was a matter of legislative judgment and we cannot say that the distinctions made are palpably arbitrary, which we have seen is the condition of judicial review. It is to be remembered that the question presented is of the power of the legislature, not the policy of the exercise of the power. *To be able to find fault, therefore, with such policy is not to establish the invalidity of the law based upon it.*" (Italics ours.)

We think it is unnecessary to consider this question further. In the cases considered this court held that the state might prohibit the doing of acts by certain classes and permit their doing by other classes if there was any reasonable ground to say that the performance of such acts by one class would be more detrimental to the public welfare. The court is not required to do that here because this statute does not prohibit the doing of any act which may be done in any business other than that of the employment agent. It prohibits all persons from receiving these fees, and unless the court is prepared to say that all frauds must be abolished by one statute and that particular frauds cannot be singled out, it must of necessity conclude that this classification is not unreasonable. All we ask the court to do is to hold that where the people attempt to strike down some evil which may be common to many businesses it is not neces-



y to think up and imagine every possible method which that evil might be carried on and then prohibit all those methods. Certainly it is competent for legislative power to overcome an evil step by step it may meet it on the highway of legislative experience. We have found no case in the books which denies this power, and upon the contrary, this court has again and again affirmed its existence.

What has been said, of course, is based upon the assumption that this act is within the police power. Being within that power, and being directed at fraud, it is thought that it follows that this particular species of fraud may be the subject of legislative action without a general prohibition.

### III

#### THIS ACT DOES NOT IMPAIR THE OBLIGATION OF ANY CONTRACT.

It is suggested, although the point is not argued at length, that inasmuch as appellants were licensed to engage in the employment agency business by the city of Spokane at the time this act became effective, it impairs the obligation of contracts made between appellants and the city of Spokane and the clients of appellants. A sufficient answer to this is to say that the constitutional prohibition against the passage of laws impairing the obligation of contracts does not restrict the police power of the state, and that all

contracts are deemed to have been made subject to the possible exercise of that power.

*Stone v. Mississippi*, 101 U. S. 814;

*Champion v. Ames*, 188 U. S. 356;

*Douglas v. Kentucky*, 168 U. S. 488;

*Boston Beer Company v. Massachusetts*, 97 U. S. 25;

*Fertilizing Company v. Hyde Park*, 97 U. S. 659.

The judgment of the district court was correct and should be affirmed.

Respectfully submitted,

W. V. TANNER,

*Attorney General of the  
State of Washington,*

L. L. THOMPSON,

*Assistant Attorney General,*

*Solicitors for Appellees.*

## APPENDIX "A."

### EMPLOYMENT AGENCY ACTS IN THE UNITED STATES.

- California: C. 182, L. of 1913.
- Colorado: Sec. 2675 to 2680, Mill's Code (1912).
- Connecticut: Sec. 4610, Gen. Stat. (1902).
- District of Columbia: 3438, Acts of 1905-06.
- Hawaii: Sec. 1419, Rev. Stat. of 1905.
- Idaho: Sec. 1443 to 1445, Code of 1908.
- Illinois: Vol. 3, Sec. 5337 to 5348, Ill. Stat. Ann.
- Indiana: C. 94 L. of 1909, as amended by C. 273, L. of 1911.
- Iowa: Sec. 2477-h, Code of 1907.
- Kansas: C. 187, L. of 1911.
- Kentucky: Sec. 3011, Rev. Stat. 1903.
- Louisiana: Act No. 58, L. of 1894.
- Maine: C. 84, L. of 1907.
- Massachusetts: C. 102, Sec. 23 to 28, Rev. Stat. of 1902.
- Michigan: Act. No. 301, Pub. Acts of 1913.
- Minnesota: Sec. 1825, Rev. Stat. of 1905; amended by C. 368, L. of 1907; amended by C. 274, L. of 1911.
- Missouri: Sec. 7794 to 7801, Rev. Stat. of 1909.
- New Hampshire: C. 60, L. of 1901.
- New Jersey: Comp. Stat. of 1910, p 2202, as amended by C. 42, L. of 1911.
- New York: C. 77, L. of 1904; amended by C. 327, L. of 1906; amended by C. 700, L. of 1910.
- Ohio: Vol. 1, Sec. 886 to 897, Ann. Code (1912).

Oklahoma: Sec. 3722, Rev. Laws, 1910.

Pennsylvania: Vol. 2, p. 3293, Pepper's Laws Digested (1910).

Rhode Island: C. 50, L. of 1909.

Utah: C. 21, L. of 1909.

Virginia: C. 155, L. of 1910.

Wisconsin: Pages 1635 to 1637, Wis. Stat. (1913).  
See U. S. Labor Bulletin No. 148, p. 2456.

ADAMS ET AL. *v.* TANNER, ATTORNEY GENERAL  
OF THE STATE OF WASHINGTON, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF WASHINGTON.

No. 273. Argued May 7, 1917.—Decided June 11, 1917.

The business of securing honest work for the unemployed in return for an agreed consideration is a useful and legitimate business which, though subject to regulation under the state police power, cannot be forbidden by an act of a State without violating the guaranty of liberty secured by the Fourteenth Amendment.

A law forbidding employment agents from receiving fees from the workers for whom they find places in effect destroys their occupation as agents for workers, and cannot be sustained upon the ground that the fees may be charged against employers.

Washington Initiative Measure Number 8 (popularly known as "The Employment Agency Law," ) as construed by the Supreme Court of the State, is contrary to the Fourteenth Amendment.  
Decree of the District Court reversed.<sup>1</sup>

THE case is stated in the opinion.

*Mr. Dallas V. Halverstadt*, with whom *Mr. Samuel H. Piles*, *Mr. Edward J. Cannon* and *Mr. George Ferris* were on the briefs, for appellants.

*Mr. L. L. Thompson*, Assistant Attorney General of the State of Washington, with whom *Mr. W. V. Tanner*, Attorney General of the State of Washington, was on the brief, for appellees.

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<sup>1</sup> By an order of the District Court, the majority and minority opinions in *Wiseman v. Tanner*, 221 Fed. Rep. 694, were adopted in this case.

244 U. S.

Opinion of the Court.

MR. JUSTICE McREYNOLDS delivered the opinion of the court.

Initiative Measure Number 8—popularly known as “The Employment Agency Law”—having been submitted to the people of Washington at the general election, received a majority vote and was thereafter declared a law, effective December 3, 1914, as provided by the state constitution. (Laws of Washington, 1915, 1.) It follows:

“Be it enacted by the People of the State of Washington:

“Section 1. The welfare of the State of Washington depends on the welfare of its workers and demands that they be protected from conditions that result in their being liable to imposition and extortion.

“The State of Washington therefore exercising herein its police and sovereign power declares that the system of collecting fees from the workers for furnishing them with employment, or with information leading thereto, results frequently in their becoming the victims of imposition and extortion and is therefore detrimental to the welfare of the state.

“Section 2. It shall be unlawful for any employment agent, his representative, or any other person to demand or receive either directly or indirectly from any person seeking employment, or from any person on his or her behalf, any remuneration or fee whatsoever for furnishing him or her with employment or with information leading thereto.

“Section 3. For each and every violation of any of the provisions of this act the penalty shall be a fine of not more than one hundred dollars and imprisonment for not more than thirty days.”

In *Huntworth v. Tanner*, 87 Washington, 670, the Supreme Court held school teachers were not “workers” within the quoted measure and that it did not apply to one conducting an agency patronized only by such teachers

and their employers. And in *State v. Rossman*, 93 Washington, 530, the same court declared it did not in fact prohibit employment agencies since they might charge fees against persons wishing to hire laborers; that it was a valid exercise of state power; that a stenographer and book-keeper is a "worker"; and that one who charged him a fee for furnishing information leading to employment violated the law.

As members of co-partnerships and under municipal licenses, during the year 1914 and before, appellants were carrying on in the City of Spokane well established agencies for securing employment for patrons who paid fees therefor. November 25, 1914, in the United States District Court, they filed their original bill against W. V. Tanner, Attorney General of the State, and George H. Crandall, Prosecuting Attorney for Spokane County, asking that Initiative Measure Number 8 be declared void because in conflict with the Fourteenth Amendment, Federal Constitution, and that the defendants be perpetually enjoined from undertaking to enforce it. On the same day they presented a motion for preliminary injunction supported by affidavits which were subsequently met by countervailing ones. Appellees thereafter entered motions to dismiss the original bill because: (1) "Said bill of complaint does not state facts sufficient to warrant this court in granting any relief to the plaintiffs; (2) that plaintiffs have a plain, speedy and adequate remedy at law; (3) that this court has no jurisdiction over the persons of these defendants or either of them, or of the subject-matter of this action." A temporary injunction was denied. The motions to dismiss were sustained and a final decree to that effect followed.

Considering the doctrine affirmed in *Truax v. Raich*, 239 U. S. 33, and cases there cited, the record presents no serious question in respect of jurisdiction.

The bill alleges "that the employment business con-

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sists in securing places for persons desiring to work" and unless permitted to collect fees from those asking assistance to such end the business conducted by appellants cannot succeed and must be abandoned. We think this conclusion is obviously true. As paid agents their duty is to find places for their principals. To act in behalf of those seeking workers is another and different service, although, of course, the same individual may be engaged in both. Appellants' occupation as agent for workers cannot exist unless the latter pay for what they receive. To say it is not prohibited because fees may be collected for something done in behalf of other principals is not good reasoning. The statute is one of prohibition, not regulation. "You take my house when you do take the prop that doth sustain my house; you take my life when you do take the means whereby I live."

We have held employment agencies are subject to police regulation and control. "The general nature of the business is such that unless regulated many persons may be exposed to misfortunes against which the Legislature can properly protect them," *Brazee v. Michigan*, 241 U. S. 340, 343. But we think it plain that there is nothing inherently immoral or dangerous to public welfare in acting as paid representative of another to find a position in which he can earn an honest living. On the contrary, such service is useful, commendable, and in great demand. In *Spokane v. Macho*, 51 Washington, 322, 324, the Supreme Court of Washington said: "It cannot be denied that the business of the employment agent is a legitimate business, as much so as is that of the banker, broker, or merchant; and under the methods prevailing in the modern business world it may be said to be a necessary adjunct in the prosecution of business enterprises." Concerning the same subject, *Ex parte Dickey*, 144 California, 234, 236, the Supreme Court of California said: "The business in which this defendant is engaged is not only innocent and



innocuous, but is highly beneficial, as tending the more quickly to secure labor for the unemployed. There is nothing in the nature of the business, therefore, that in any way threatens or endangers the public health, safety or morals." And this conclusion is fortified by the action of many States in establishing free employment agencies charged with the duty to find occupation for workers.

It is alleged: "That plaintiffs have furnished positions for approximately ninety thousand persons during the last year, and have received applications for employment from at least two hundred thousand laborers, for whom they have been unable to furnish employment. . . . That such agencies have been established and conducted for so long a time that they are now one of the necessary means whereby persons seeking employment are able to secure the same." A suggestion in behalf of the State that while a pursuit of this kind "may be beneficial to some particular individuals, or in specific cases, economically it is certainly non-useful, if not vicious, because it compels the needy and unfortunate to pay for that which they are entitled to without fee or price, that is, the right to work," while possibly indicative of the purpose held by those who originated the legislation, in reason, gives it no support.

Because abuses may, and probably do, grow up in connection with this business, is adequate reason for hedging it about by proper regulations. But this is not enough to justify destruction of one's right to follow a distinctly useful calling in an upright way. Certainly there is no profession, possibly no business, which does not offer peculiar opportunities for reprehensible practices; and as to every one of them, no doubt, some can be found quite ready earnestly to maintain that its suppression would be in the public interest. Skillfully directed agitation might also bring about apparent condemnation of any one of them by the public. Happily for all, the

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fundamental guaranties of the Constitution cannot be freely submerged if and whenever some ostensible justification is advanced and the police power invoked.

The general principles by which the validity of the challenged measure must be determined have been expressed many times in our former opinions. It will suffice to quote from a few.

In *Allgeyer v. Louisiana*, 165 U. S. 578, 589, we held invalid a statute of Louisiana which undertook to prohibit a citizen from contracting outside the State for insurance on his property lying therein because it violated the liberty guaranteed to him by the Fourteenth Amendment. "The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

"If, looking at all the circumstances that attend, or which may ordinarily attend, the pursuit of a particular calling, the State thinks that certain admitted evils cannot be successfully reached unless that calling be actually prohibited, the courts cannot interfere, unless, looking through mere forms and at the substance of the matter, they can say that the statute enacted professedly to protect the public morals has no real or substantial relation to that object, but is a clear, unmistakable infringement of rights secured by the fundamental law." *Booth v. Illinois*, 184 U. S. 425, 429.

"It is also true that the police power of the State is not unlimited, and is subject to judicial review, and when

exerted in an arbitrary or oppressive manner such laws may be annulled as violative of rights protected by the Constitution. While the courts can set aside legislative enactments upon this ground, the principles upon which such interference is warranted are as well settled as is the right of judicial interference itself. The legislature being familiar with local conditions is, primarily, the judge of the necessity of such enactments. The mere fact that a court may differ with the legislature in its views of public policy, or that judges may hold views inconsistent with the propriety of the legislation in question, affords no ground for judicial interference, unless the act in question is unmistakably and palpably in excess of legislative power. . . . If there existed a condition of affairs concerning which the legislature of the State, exercising its conceded right to enact laws for the protection of the health, safety or welfare of the people, might pass the law, it must be sustained; if such action was arbitrary interference with the right to contract or carry on business, and having no just relation to the protection of the public within the scope of legislative power, the act must fail." *McLean v. Arkansas*, 211 U. S. 539, 547, 548.

"The Fourteenth Amendment protects the citizen in his right to engage in any lawful business, but it does not prevent legislation intended to regulate useful occupations which, because of their nature or location, may prove injurious or offensive to the public. Neither does it prevent a municipality from prohibiting any business which is inherently vicious and harmful. But, between the useful business which may be regulated and the vicious business which can be prohibited lie many non-useful occupations, which may, or may not be harmful to the public, according to local conditions, or the manner in which they are conducted." *Murphy v. California*, 225 U. S. 623, 628.

We are of opinion that Initiative Measure Number 8 as

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construed by the Supreme Court of Washington is arbitrary and oppressive, and that it unduly restricts the liberty of appellants, guaranteed by the Fourteenth Amendment, to engage in a useful business. It may not therefore be enforced against them.

The judgment of the court below is reversed and the cause remanded for further proceedings in conformity with this opinion.

*Reversed.*

MR. JUSTICE MCKENNA dissents upon the ground that under the decisions of this court—some of them so late as to require no citation or review—the law in question is a valid exercise of the police power of the State, directed against a demonstrated evil.

MR. JUSTICE BRANDEIS, dissenting.

To declare the statute of a State, enacted in the exercise of the police power, invalid under the Fourteenth Amendment, is a matter of such seriousness that I state the reasons for my dissent from the opinion of the court.

The statute of the State of Washington, commonly known as the "Abolishing Employment Offices Measure" was proposed by Initiative Petition No. 8, filed July 3, 1914, and was adopted November 3, 1914, at the general election; 162,054 votes being cast for the measure and 144,544 against it. In terms the act merely prohibits the taking of fees from those seeking employment.<sup>1</sup>

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<sup>1</sup> "An Act to prohibit the collection of fees for the securing of employment or furnishing information leading thereto and fixing a penalty for violation thereof.

"Be it enacted by the People of the State of Washington:

"Section 1. The welfare of the State of Washington depends on the welfare of its workers and demands that they be protected from conditions that result in their being liable to imposition and extortion.

Plaintiffs, who are proprietors of private employment agencies in the City of Spokane, assert that this statute, if enforced, would compel them to discontinue business and would thus, in violation of the Fourteenth Amendment, deprive them of their liberty and property without due process of law. The act leaves the plaintiffs free to collect fees from employers; and it appears that private employment offices thus restricted are still carrying on business.<sup>1</sup> But even if it should prove, as plaintiffs allege, that their business could not live without collecting fees

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"The State of Washington therefore exercising herein its police and sovereign power declares that the system of collecting fees from the workers for furnishing them with employment, or with information leading thereto, results frequently in their becoming the victims of imposition and extortion and is therefore detrimental to the welfare of the state.

"Section 2. It shall be unlawful for any employment agent, his representative, or any other person to demand or receive, either directly or indirectly, from any person seeking employment, or from any person on his or her behalf, any remuneration or fee whatsoever for furnishing him or her with employment or with information leading thereto.

"Section 3. For each and every violation of any of the provisions of this act the penalty shall be a fine of not more than one hundred dollars and imprisonment for not more than thirty days."

The Supreme Court of Washington has twice passed upon the scope of the act; holding in *Huntworth v. Tanner*, 87 Washington, 670, that it is not applicable to teachers and in *State v. Rossman*, 93 Washington, 530, that it is applicable to stenographers and bookkeepers.

<sup>1</sup>See Report of the State of Washington Bureau of Labor (1915-1916), pp. 120-1.

"The free agencies, we are pleased to be able to say, are growing in popularity, and while they do not advertise their business with the same thrift that the other fellows did, they are coming into general service. There are three services of this kind: The private agency that receives all compensation from employers, either by the month, year, or per the service rendered; the federal agency, and the municipal agency; these latter two have offices in the larger places and are doing good work and the service is free to both employe and the employer. In the smaller cities and towns the federal is the prevailing agency and the postmaster of the place is usually the local representative."

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from employees, that fact would not necessarily render the act invalid. Private employment agencies are a business properly subject to police regulation and control. *Brazee v. Michigan*, 241 U. S. 340. And this court has made it clear that a statute enacted to promote health, safety, morals or the public welfare may be valid, *although* it will compel discontinuance of existing businesses in whole or in part. Statutes prohibiting the manufacture and sale of liquor present the most familiar example of such a prohibition. But where, as here, no question of interstate commerce is involved, this court has sustained also statutes or municipal ordinances which compelled discontinuance of such businesses as (a) of manufacturing and selling oleomargarine, *Powell v. Pennsylvania*, 127 U. S. 678; (b) of selling cigarettes, *Austin v. Tennessee*, 179 U. S. 343; (c) of selling futures in grain or other commodities, *Booth v. Illinois*, 184 U. S. 425; (d) of selling stocks on margin, *Otis v. Parker*, 187 U. S. 606; (e) of keeping billiard halls, *Murphy v. California*, 225 U. S. 623; (f) of selling trading stamps, *Rast v. Van Deman & Lewis Co.*, 240 U. S. 342, 368.

These cases show that the scope of the police power is not limited to regulation as distinguished from prohibition. They show also that the power of the State exists equally, whether the end sought to be attained is the promotion of health, safety or morals or is the prevention of fraud or the prevention of general demoralization. "If the State thinks that an admitted evil cannot be prevented except by prohibiting a calling or transaction not in itself necessarily objectionable, the courts cannot interfere, unless, in looking at the matter, they can see that it 'is a clear, unmistakable infringement of rights secured by the fundamental law.'" *Otis v. Parker*, 187 U. S. 606, 609; *Booth v. Illinois*, 184 U. S. 425, 429. Or as it is so frequently expressed, the action of the legislature is final, unless the measure adopted appears clearly to be arbitrary

or unreasonable or to have no real or substantial relation to the object sought to be attained. Whether a measure relating to the public welfare is arbitrary or unreasonable, whether it has no substantial relation to the end proposed is obviously not to be determined by assumptions or by *a priori* reasoning. The judgment should be based upon a consideration of relevant facts, actual or possible—*Ex facto jus oritur*. That ancient rule must prevail in order that we may have a system of living law.

It is necessary to enquire therefore: What was the evil which the people of Washington sought to correct? Why was the particular remedy embodied in the statute adopted? And, incidentally, what has been the experience, if any, of other States or countries in this connection? But these enquiries are entered upon, not for the purpose of determining whether the remedy adopted was wise or even for the purpose of determining what the facts actually were. The decision of such questions lies with the legislative branch of the government. *Powell v. Pennsylvania*, 127 U. S. 678, 685. The sole purpose of the enquiries is to enable this court to decide, whether in view of the facts, actual or possible, the action of the State of Washington was so clearly arbitrary or so unreasonable, that it could not be taken "by a free government without a violation of fundamental rights." See *McCray v. United States*, 195 U. S. 27, 64.

#### 1. *The Evils*.<sup>1</sup>

The evils with which the people of Washington were confronted arose partly from the abuses incident to the

<sup>1</sup> The evils incident to private employment agencies first arrested public attention in America about 1890. During the fifteen years preceding the enactment of the Washington law there were repeated investigations, official and unofficial, and there was much discussion and experimentation. See *Free Public Employment Offices in the United States*, U. S. Bureau of Labor Bulletin No. 68, p. 1; *Statistics of Unemployment and the Work of Employment Offices*, U. S. Bureau

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system of private employment agencies and partly from its inadequacy.

(a) *The abuses.*

These are summarized in a report published by the United States Bureau of Labor in October, 1912,<sup>1</sup> thus:

"Private employment agencies, which charge a fee for their services, are found in every city of any size in the United States. The nature of their business is such as to make possible most iniquitous practices. Their patrons are frequently men and women with only a dollar or two, which they are eager to give up for the opportunity of earning more. They are often of small intelligence and easily duped. Stories of how these agencies have swindled and defrauded those who sought employment through them are heard universally. Some of the more common of the fraudulent methods said to be used by these agencies are the following:

"1. Charging a fee and failing to make any effort to find work for the applicant.

"2. Sending applicants where no work exists.

"3. Sending applicants to distant points where no work or where unsatisfactory work exists, but whence the applicant will not return on account of the expense involved.

"4. Collusion between the agent and employer, whereby the applicant is given a few days work and then discharged to make way for new workmen, the agent and employer dividing the fee.

"5. Charging exorbitant fees, or giving jobs to such applicants as contribute extra fees, presents, etc.

"6. Inducing workers, particularly girls, who have been placed, to leave, pay another fee, and get a 'better job.'

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of Labor Bulletin No. 109, p. 5; Subject Index of the U. S. Bureau of Labor Statistics, Bulletin No. 174, pp. 85-87; Munro, Bibliography of Municipal Government, pp. 379-381.

<sup>1</sup> United States Bureau of Labor Bulletin No. 109, p. 36.



"Other evils charged against employment agents are the congregating of persons for gambling or other evil practices, collusion with keepers of immoral houses, and the sending of women applicants to houses of prostitution; sometimes employment offices are maintained in saloons, with the resulting evils."

In the report to Congress of the United States Commission on Industrial Relations, created by Act of August 23, 1912, c. 351, 37 Stat. 415, which gave public hearings on the subject of employment offices, in May, 1914, the abuses are found to be as follows: <sup>1</sup>

"23. There are many private employment agents who try to conduct their business honestly, but they are the exception rather than the rule. The business as a whole reeks with fraud, extortion, and flagrant abuses of every kind. The most common evils are as follows:

"Fees are often charged out of all proportion to the service rendered. We know of cases where \$5, \$9, \$10, and even \$16 apiece has been paid for jobs at common labor. In one city the fees paid by scrubwomen is at the rate of \$24 a year for their poorly paid work. Then there is discrimination in the charges made for the same jobs. Often, too, men are sent a long distance, made to pay fees and transportation, only to find that no one at that place ordered men from the employment agent. A most pernicious practice is the collusion with foremen or superintendents by which the employment agent 'splits fees' with them. That is, the foreman agrees to hire men of a certain employment agent on condition that one-fourth or one-half of every fee collected from men whom he hires be given to him. This leads the foreman to discharge men constantly in order to have more men hired through the

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<sup>1</sup> Final Report and Testimony submitted to Congress by the Commission on Industrial Relations created by the Act of August 23, 1912, 64th Cong. 1st sess., Doc. 415, vol. I, pp. 109-111. See also vol. II, pp. 1165-1440.

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agent and more fees collected. It develops the 'three-gang' method so universally complained of by railroad and construction laborers, namely, one gang working, another coming to work from the employment agent, and a third going back to the city.

"Finally, there is the most frequent abuse—misrepresentation of terms and condition of employment. Men are told that they will get more wages than are actually paid, or that the work will last longer than it actually will, or that there is a boarding house when there really is an insanitary camp, or that the cost of transportation will be paid, when it is to be deducted from the wages. They are not told of other deductions that will be made from wages; they are not informed about strikes that may be on at the places to which they are sent, nor about other important facts which they ought to know. These misrepresentations, it must be said, are often as much the fault of the employer as of the labor agent. Also the employer will place his call for help with several agents, and each will send enough to fill the whole order, causing many to find no jobs. Labor agents and laborers alike are guilty of the misuse of free transportation furnished by employers to prospective help. And it is true also that many applicants perpetrate frauds on the labor agents themselves, as, for example, causing them to return fees when positions actually were secured. This is the result of the general feeling that the whole system of paying fees for jobs is unjust; and if they must pay in order to get work, then any attempt to get the fee back is justifiable."

(b) *The Inadequacy.*

But the evils were not limited to what are commonly called abuses—like the fraud and extortion described above. Even the exemplary private offices charging fees to workers might prove harmful, for the reason thus stated in the report to Congress of the United States Commission on Industrial Relations, cited *supra*.

"18. . . . Investigations show, however, that instead of relieving unemployment and reducing irregularity, these employment agencies actually serve to congest the labor market and to increase idleness and irregularity of employment. They are interested primarily in the fees they can earn, and if they can earn more by bringing workers to an already overcrowded city, they do so. Again, it is an almost universal custom among private employment agents to fill vacancies by putting in them people who are working at other places. In this way new vacancies are created and more fees can be earned.

"19. They also fail to meet the problem because they are so numerous and are necessarily competitive. With few exceptions, there is no co-operation among them. This difficulty is further emphasized by the necessity of paying the registration fees required by many agencies; obviously the laborer can not apply to very many if he has to pay a dollar at each one.

"20. The fees which private employment offices must charge are barriers which prevent the proper flow of labor into the channels where it is needed and are a direct influence in keeping men idle. In the summer, when employment is plentiful, the fees are as low as 25 cents, and men are even referred to work free of charge. But this must necessarily be made up in the winter, when work is scarce. At such times, when men need work most badly, the private employment offices put up their fees and keep the unemployed from going to work until they can pay \$2, \$3, \$5, and even \$10 and more for their jobs. This necessity of paying for the privilege of going to work, and paying more the more urgently the job is needed, not only keeps people unnecessarily unemployed, but seems foreign to the spirit of American freedom and opportunity.

"21. An additional injustice inevitably connected with labor agencies which charge fees is that they must place

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the entire cost of the service upon those least able to bear it. Employment agents say that employers will not pay the fees; hence they must charge the employees. Among the wage earners, too, however, those who are least in need and can wait for work, pay the least for jobs and even get them free, while those who are most in need make up for all the rest and pay the highest fees. The weakest and poorest classes of wage earners are therefore made to pay the largest share for a service rendered to employers, to workers, and to the public as well."

## 2. *The Remedies.*

During the fifteen years preceding 1914 there had been extensive experimentation in the regulation of private employment agencies. Twenty-four States had attempted *direct* regulation under statutes often supplemented by municipal ordinances.<sup>1</sup> Nineteen States had attempted *indirect* regulation through the competition of state offices, and seven others through competition of municipal

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<sup>1</sup> "It is not necessary here to enter into the relative merits of governmental regulation and governmental operation. Suffice it to say that twenty-four States and the District of Columbia have attempted to regulate private employment agencies and have made a miserable failure of it. The business lends itself easily to fraud and imposition and it is far more true of the private agencies than of the public offices that they have been frauds as well as failures."

Public Employment Offices—W. M. Leiserson, 29 Political Science Quarterly (March, 1914), p. 36.

"The United States possesses at the present time no adequate system, either state or national, for the regulation of private employment agencies, either from the point of view of the content of the laws, affording regulations of the business and restrictions as to how the business shall be carried on, or as to proper methods of enforcement." [Labor Laws and Their Enforcement, edited by Susan M. Kingsbury (Boston, 1911), p. 366. See Chapter VI of this work for a study of the regulation of private employment agencies by Mabelle Moses. See also Chapter 663, Laws of 1913, State of Wisconsin.]

offices.<sup>1</sup> Other experiments in indirect regulation through competition were made by voluntary organizations, philanthropic, social and industrial.<sup>2</sup> The results of those experiments were unsatisfactory. The abuses continued in large measure; and the private offices survived to a great extent the competition of the free agencies, public and private. There gradually developed a conviction that the evils of private agencies were inherent and ineradicable, so long as they were permitted to charge fees to the workers seeking employment. And many believed that such charges were the root of the evil.

On September 25, 1914, the American Association of Public Employment Offices adopted at its annual meeting the following resolutions:

*"Resolved, That this association go on record as favoring the elimination as soon as possible, of all private employment agencies operating for a profit within the United States, and that it recommends to the consideration of the United States Commission on Industrial Relations and Congress and the various State legislatures legislation having this end in view."*

The United States Commission on Industrial Relations declared in its report to Congress:<sup>3</sup>

"24. Attempts to remove these abuses by regulation have been made in 31 States, but with few exceptions they have proved futile, and at most they have served only to promote a higher standard of honesty in the business and have not removed the other abuses which are inherent

<sup>1</sup> Proceedings of the Association of Public Employment Offices (Sept. 25, 1914), U. S. Dep. of Labor, Bureau of Labor Statistics Bulletin No. 192, p. 61.

<sup>2</sup> Unemployment and Work of Employment Offices, Bulletin of U. S. Bureau of Labor No. 109, pp. 5, 37 (Oct., 1912).

<sup>3</sup> Made in August, 1915, and cited *supra*, p. 602, note 1. Between 1914 and this date six States had legislated on the subject. See Unemployment Survey, 1914-1915. 5 American Labor Legislation Review, p. 560.

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in the system. Where the States and cities have spent much money for inspectors and complaint adjusters there has been considerable improvement in the methods of private employment agencies, but most of the officers in charge of this regulation testify that the abuses are in 'the nature of the business' and never can be entirely eliminated. They therefore favor the total abolition of private labor agencies. This is also the common opinion among working people, and in the several States attempts have already been made to accomplish this by law."

But the remedies proposed were not limited to the suppression of private offices charging fees to workers, and the extension of the systems of state and municipal offices. The conviction became widespread that for the solution of the larger problem of unemployment the aid of the Federal Government and the utilization and development of its extensive machinery was indispensable. During the seven years preceding 1914 a beginning had been made in this respect. The Immigration Act of February 20, 1907, c. 1134, 34 Stat. 898, 909, created within the Bureau of Immigration and Naturalization a Division of Information, charged with the duty of promoting "a beneficial distribution of aliens." The services rendered by this division included, among others, some commonly performed by employment agencies. While it undertook to place in positions of employment only aliens, its operations were national in scope. The Act of March 4, 1913, creating the Department of Labor, resulted in a transfer of the Bureau of Immigration, including the Division of Information, to that department. (37 Stat. 736.) By this transfer the scope of the division's work was enlarged to correspond with the broad powers of the Labor Department. These were declared by Congress to be: "to foster, promote and develop the welfare of the wage earners of the United States, to improve their

working conditions, and to advance their opportunities for profitable employment."

Then its efforts "to distribute" (that is both to supply and to find places for) labor were extended to include citizens as well as aliens; and much was done to develop the machinery necessary for such distribution. In the summer of 1914, and in part before the filing in the State of Washington of the proposal for legislation here in question, action had been taken by the Department of Labor which attracted public attention. It undertook to supply harvest hands needed in the Middle West and also to find work for the factory hands thrown out of employment by the great fire at Salem, Massachusetts, June 25, 1914.<sup>1</sup> The division was strengthened by co-operation with other departments of the Federal Government (Agriculture, Interior, Commerce, and the Post Office with its 60,000 local offices) and with state and municipal employment offices. As early as June 13, 1914, the United States Department of Labor had also sought the co-operation in this work of all the leading newspapers in America including those printed in foreign languages.<sup>2</sup>

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<sup>1</sup> The fire was so extensive that the Congress appropriated \$200,000 for relief of all sufferers. Act of August 1, 1914, c. 223, 38 Stat. 681.

<sup>2</sup> Annual Report of the Secretary of Labor, 1914, pp. 48-55; Monthly Review of the U. S. Bureau of Labor Statistics, July, 1915, p. 8; See also Annual Report of the Secretary of Labor, 1915, p. 36: "*Interdepartmental coöperation*.—Through the coöperation of the Post Office Department it became possible to bring to the aid of this labor-distribution service some 60,000 post offices and thereby to create a network of communication between employers needing help without knowing where to get it and workers wanting employment without knowing where to find it. Either employer or workman may obtain at any post office in the United States a blank application supplied by this department which, after filling out and signing it, he may deposit in the mails anywhere free of postage." "*Employment bulletins*.—The bulletins contain a statement of unmatched applications, no matter what part of the country they may come from. It is not expected, of course, that applications for work of a minor character will ordinarily

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### 3. *Conditions in the State of Washington.*

The peculiar needs of Washington emphasized the defects of the system of private employment offices.

#### (a) *The evils.*

The conditions generally prevailing are described in a report recently published by the United States Department of Labor, thus: <sup>1</sup>

"In no part of the United States perhaps is there so large a field for employment offices as in the Pacific States. As has been noted, industrial conditions there favor inconstancy of employment. Much of the business activity is based upon the casual, short-time job. This in itself means the frequent shifting of workers from place to place. And the shifting is the more difficult, as much of the work offered is in more or less remote districts of the country. . . .

"The necessity laid upon so many workers of constantly seeking new jobs opens a peculiarly fertile field for their exploitation by unscrupulous private employment agencies. There is much testimony to the fact and frequency of such exploitation. The most striking evidence of this is that in the State of Washington private agencies made themselves so generally distrusted that in 1915 their complete abolition was ordered by popular vote. . . .

"Prior to 1914 there was practically no legislation regarding private employment agencies, and there had been no attempt at State supervision of their conduct. But

be matched by applications for workers of that kind from distant stations. It is assumed, however, that bulletined applications may possibly be matched through the coöperation of near-by stations within a reasonable radius. The bulletins are also systematically sent to such newspapers as have indicated their desire to receive them for possible publication as news matter of interest to their respective readers."

<sup>1</sup> Labor Laws and their Administration in the Pacific States. United States Department of Labor, Bureau of Labor Bulletin No. 211 (1917), pp. 17-18.



distrust of such agencies was constantly increasing and culminated in the year mentioned in the passage by popular initiative of an act aiming at the total suppression of all private employment agencies of the commercial type."

The reports of the Washington State Bureau of Labor give this description:

"The investigations of the Bureau show that the worst labor conditions in the state are to be found on highway and railroad construction work, and these are largely because the men are sent long distances by the employment agencies, are housed and fed poorly at the camps, and are paid on an average of \$1.75 to \$2.25 a day, out of which they are compelled to pay \$5.50 to \$7.00 per week for board, generally a hospital fee of some kind, always a fee to the employment agency and their transportation to the point where the work is being done. The consequence is that they usually have but little money left when the work is finished and if, as frequently happens, they work only a week or two and are then discharged they are in as bad a situation as they were before they went to work, and sometimes worse, if they do not have enough money to get back to the place from which they started." <sup>1</sup>

"That the honest toiler was their victim there is no question: not alone of a stiff fee for the information given but a systematic method was adopted in order to keep the business going. Managers of agencies and managers of jobs, their superintendents, foremen or sub-foremen, were in this scheme for fleecing the workingman. Men in large numbers would be sent to contract jobs and if on the railroads 'free fare' was part of the inducement, or perhaps the agency would charge a nominal fee if the distance was great and this, too, would become a perquisite of the

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<sup>1</sup> Washington State Bureau of Labor. Report 1913-14, pp. 27-28.

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bureau to finally go through the clearing house. In many cases men would be unsatisfactory, at least they would be told so, discharged in a few days and sent adrift as poor, may be poorer, than when they came there. New men would have to be secured, and thus the thing would go on revolving. So it went until at last it became so obnoxious that the public indignation was at length aroused, resulting in the passing of a law doing away with them."<sup>1</sup>

The abuses and the inadequacy of the then existing system are also described by state officials in affidavits included in the record.

(b) *The remedies.*

Washington had not tried direct regulation of private employment offices; but that method was being considered as late as 1912.<sup>2</sup> Its people had had, on the other hand, exceptional opportunities of testing public employment offices. The municipal employment office established at Seattle in 1894 under an amendment of the city charter is among the oldest public offices in the United States. Takoma established a municipal office in 1904, Spokane in 1905 and Everett in 1908.<sup>3</sup> The continuance and increase of these municipal offices indicate that their experience in public employment agencies was at least encouraging. And the low cost of operating them was extraordinary. In Spokane the fees charged by private agencies ranged from \$1 upward and were usually about

<sup>1</sup> Washington State Bureau of Labor. Report 1915-16, p. 120.

<sup>2</sup> Washington State Bureau of Labor, 1911-1912. Report of Commissioner, p. 16: "It has been demonstrated that state control of employment agencies is the most effective way to properly regulate them. I would earnestly recommend a state law similar to the one in Illinois that went into effect July 1, 1911, and has proven to be the best law for this purpose in this country."

<sup>3</sup> The first free public employment office in the United States was the municipal agency established in Cleveland in 1890. Then followed (in 1893) the Los Angeles office. Bulletin of United States Bureau of Labor No. 68, p. 1 (Jan. 1907).

\$2.<sup>1</sup> In the Seattle free municipal agency the cost of operation, per position filled, was reduced to a trifle over 4 cents.<sup>2</sup> The preliminary steps for establishing "Distribution Stations" under the federal system, including one at Seattle, had been taken before the passage of the Washington law.<sup>3</sup> Later branch offices were established in thirteen other cities.<sup>4</sup>

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<sup>1</sup> Washington State Bureau of Labor Report 1913-14, p. 291.

W. D. Wheaton, Labor Agent.—"The complaint against the private office is almost universal. The experience of this office is that private agencies charge all that the traffic will bear and that in hard times, when work is scarce and the worker poverty stricken, the fee is placed so high as to be almost prohibitive, and the agencies take longer chances, sometimes sending men on only a rumor, depending on their financial straits to make it impossible to return.

"The fees charged run from \$1.00 for the poorest job of uncertain duration to as high as 10 per cent. of the first year's salary in educational lines, and 30 per cent. of the first month's salary in office or mercantile lines. Most of the agencies catering to the better class of positions charge a registration fee which is worked to the limit—or rather without limit. Advertisements for attractive positions are placed with the newspapers and registration is made of all that apply, irrespective of whether the position has been filled or not, and generally at a fee of \$2.00 or more. This registration fee is always followed by a percentage of the earnings when a position is secured, but only a small proportion of those registering are placed in positions.

"The average charge per position in all agencies will run high, and yet the applicant cannot have a feeling of security in the position obtained for the reason that the great majority of private agencies are primarily interested in the fee and are not as careful in placing applicants as they would be did the possibility of another fee not exist."

<sup>2</sup> United States Bureau of Labor Bulletin No. 109, p. 136.

"The extremely low cost of each position filled is noteworthy, as is the large number of positions secured. A total of 37,834 positions were filled in 1906, and in 1909, 38,846. The cost per position was lowest in 1906, only 4.03 cents. Only twice since 1897 has the average cost gone above 6 cents."

<sup>3</sup> See Report of Secretary of Labor, 1914, p. 51.

<sup>4</sup> Aberdeen, Bellingham, Custer, Everett, Friday Harbor, Lynden, Noosack, North Yakima, Port Angeles, Port Townsend, Spokane,

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#### 4. *The Fundamental Problem.*

The problem which confronted the people of Washington was far more comprehensive and fundamental than that of protecting workers applying to the private agencies. It was the chronic problem of unemployment—perhaps the gravest and most difficult problem of modern industry—the problem which, owing to business depression, was the most acute in America during the years 1913 to 1915.<sup>1</sup> In the State of Washington the suffering from unemployment was accentuated by the lack of staple industries operating continuously throughout the year and by unusual fluctuations in the demand for labor with consequent reduction of wages and increase of social unrest.<sup>2</sup> Students of the larger problem of unemployment appear to agree that establishment of an adequate system of employment offices or labor exchanges<sup>3</sup> is an in-

Takoma, Walla Walla. Monthly Review of U. S. Labor Statistics, July, 1915, p. 9. See Report of Secretary of Labor, 1915, p. 36; 1916, p. 54. Hearings Committee on Labor, on H. R. 5783, to establish a National Employment Bureau. 64th Cong., 1st sess., February, 1916, p. 49.

<sup>1</sup> The Unemployment Crisis of 1914-1915, 5 American Labor Legislation Review, p. 475.

<sup>2</sup> Washington State Bureau of Labor Report, 1913-1914, pp. 13, 16-17. Unemployment Survey, 5 American Labor Legislation Review, 482, 483 (1915).

<sup>3</sup> Recent Advances in the Struggle against Unemployment, by Prof. Charles R. Henderson, 2 American Labor Legislation Review, 105, 106 (1911). "The point of starting ameliorative effort is the employment agency or 'labor exchange.'"

"When we compare the ordinary employment office with the board of trade for cotton or grain, or with the bankers' clearing-house, we begin to realize how belated, rudimentary and primitive our present labor exchange is. Yet the issues at stake are quite as vital in the case of demand and supply in the labor market as in the stock and grain exchange."

A Problem of Industry, 4 American Labor Legislation Review, p. 211:

"The labor market is unorganized, resulting in confusion, waste and

dispensable first step toward its solution. There is reason to believe that the people of Washington not only considered the collection by the private employment offices of fees from employees a social injustice;<sup>1</sup> but that they considered the elimination of the practice a necessary

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loss to employers and employees. It means suffering to individual workers and their families, a lowering of the standard of living, impaired vitality and efficiency, and a tendency for the unemployed to become unemployable, dependent, degraded. In fact, the demoralizing effect of unemployment upon the individual is matched only by its wastefulness to society."

The Prevention of Unemployment, 5 American Labor Legislation Review, p. 176:

"An essential step toward a solution of the problem of unemployment is the organization of the labor market through a connected network of public employment exchanges. This is vitally important as a matter of business organization and not of philanthropy. It is of as much importance for the employer to find help rapidly and efficiently as it is for the worker to find work without delay. The necessity of organized markets is recognized in every other field of economic activity, but we have thus far taken only timid and halting steps in the organization of the labor market. The peddling method is still, even in our 'efficient' industrial system, the prevalent method of selling labor. Thus a purely business transaction is carried on in a most unbusiness-like, not to say medieval manner."

Public Employment Bureaus, Charles B. Barnes, 5 American Labor Legislation Review, p. 195:

"Unemployment is no longer intermittent in this country; it has come to be a chronic condition which needs to be dealt with in a regular and systematic manner. The first step in properly dealing with this situation is the establishing of a series of coöperating public employment bureaus."

The Unemployed in Philadelphia, Department of Public Works (1915), p. 113.

What is done for the Unemployed in European Countries, U. S. Bureau of Labor Bulletin No. 76, pp. 741-934; The British System of Labor Exchanges, U. S. Bureau of Labor Statistics, No. 206.

<sup>1</sup> Washington State Employment Agency Referendum, by W. M. Leiserson, 33 Survey, 87 (October 24, 1914):

"Any one who knows the employment agency business and every

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preliminary to the establishment of a constructive policy for dealing with the subject of unemployment.<sup>1</sup>

It is facts and considerations like these which may have led the people of Washington to prohibit the collection by employment agencies of fees from applicants for work. And weight should be given to the fact that the statute has been held constitutional by the Supreme Court of Washington and by the Federal District Court (three judges sitting)—courts presumably familiar with the local conditions and needs.

In so far as protection of the applicant is a specific purpose one who has tried earnestly to regulate private agencies will testify to the futility of regulation.

"But the inherent justice of the proposed Washington act can be shown in a better way. Ask the employment agent to whom he rendered the service and he will answer 'to employer and to employe.'

"Then why don't you charge the employer?"

"It is impossible. If we depended upon employers for our fees, we would have to go out of business. They simply will not pay."

"Every time this question is put to employment agents the answer is the same: 'We charge the worker because we can get the fee from him and we cannot get it from the employer.'"

"This is the downright wrong against which Washington initiative No. 8 is directed."

<sup>1</sup> General Discussion on Unemployment, 5 American Labor Legislation Review, p. 451; T. S. McMahon, Univ. of Washington.

"The people of the state of Washington are not indifferent to the problem of unemployment nor do they show any tendency to offer charitable panaceas as a permanent remedy. They are trying to work out some constructive policy, and as a preliminary step have made it illegal for employment offices to charge fees for jobs.

"A bill will be presented to the next legislature for the establishment of a network of public employment offices all over the state. This will make possible the complete organization of the labor market, which we hope is the first step toward the organization of industry itself.

"The aggressive attitude of the leaders among the workers has impressed upon the mind of the people the fact that the problem will have to be met in another way than by providing food and clothing for a period of distress such as we are passing through at the present time.

"I believe that this attitude on the part of the working people, which

pose of the statute—a precedent was furnished by the Act of Congress, December 21, 1898, 30 Stat. 755, 763 (considered in *Patterson v. Bark Eudora*, 190 U. S. 169) which provides, among other things:

“If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offence be liable to a penalty of not more than one hundred dollars.”

In so far as the statute may be regarded as a step in the effort to overcome industrial maladjustment and unemployment by shifting to the employer the payment of fees, if any, the action taken may be likened to that embodied in the Washington Workmen's Compensation Law (sustained in *Mountain Timber Co. v. Washington*, 243 U. S. 219) whereby the financial burden of industrial accidents is required to be borne by the employers.

As was said in *Holden v. Hardy*, 169 U. S. 366, 387:

“ . . . in view of the fact that from the day Magna Charta was signed to the present moment, amendments to the structure of the law have been made with increasing frequency, it is impossible to suppose that they will not continue, and the law be forced to adapt itself to new conditions of society, and, particularly to the new relations between employers and employes as they arise.”

In my opinion, the judgment of the District Court should be affirmed.

MR. JUSTICE HOLMES and MR. JUSTICE CLARKE concur in this dissent.

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is characteristically western, will do more towards the solution of this problem than perhaps we, who discuss it in a theoretical way, can accomplish. They do have some plan of action, and some definite program. Either we shall have to work out some program of ultimate solution of unemployment, or we will have to accept the solution they are offering us. The one they are offering us is socialism.”